

EXHIBIT 418

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

- - -

IN RE: NATIONAL : MDL NO. 2804
PRESCRIPTION OPIATE :
LITIGATION :
:

THIS DOCUMENT RELATES TO : CASE NO.
ALL CASES : 1:17-MD-2804
:
: Hon. Dan A.
: Polster

- - -

January 31, 2019

- - -

HIGHLY CONFIDENTIAL - SUBJECT TO FURTHER
CONFIDENTIALITY REVIEW

Videotaped deposition of JANET
GETZEY HART taken pursuant to notice, was held at
the law offices of Morgan, Lewis & Bockius LLP,
1701 Market Street, Philadelphia, Pennsylvania,
beginning at 9:38 a.m., on the above date, before
Ann Marie Mitchell, a Federally Approved
Certified Realtime Reporter, Registered Diplomat
Reporter, Registered Merit Reporter and Notary
Public.

- - -

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Page 6			Page 8		
1	I N D E X		1	Hart- Email chain, top one dated 224	
2			2	30(b)(6)- 2013-08-07, Bates stamped	
3			13	Rite Aid OMDL 0024599 and	
4				Rite_Aid_OMDL_0024600	
5	Testimony of: JANET GETZEY HART		3	Hart- Handwritten notes, 277	
6	By Mr. Pifko 11, 285		4	30(b)(6)- 11/23/10, Bates stamped	
7	By Ms. McEnroe 274		14	Rite_Aid_OMDL_0046066	
8			5	Hart- PowerPoint slides, Bates 278	
9	E X H I B I T S		6	30(b)(6)- stamped	
10			15	Rite Aid OMDL_0046067	
11			7	through	
12	NO.	DESCRIPTION PAGE		Rite_Aid_OMDL_0046072	
13	Hart-	Second Notice of 14	8	Hart- Email dated 2010-12-10, 279	
14	30(b)(6)-	Deposition Pursuant to	9	30(b)(6)- Bates stamped	
15	1	Rule 30(B)(6) and Document	16	Rite Aid OMDL 0020381 and	
16		Request Pursuant to Rule	10	Rite Aid OMDL 0020381	
17		30(B)(2) and Rule 34 to	11	Hart- Handwritten notes, 280	
18		Defendant Rite Aid of	12	30(b)(6)- 12/14/10, Bates stamped	
19		Maryland, Inc., d/b/a Rite	17	Rite Aid OMDL 0046065	
20		Aid and Mid-Atlantic	13	Hart- Email dated 2011-01-21, 282	
21		Customer Support Center,	14	30(b)(6)- Bates stamped	
22		Inc.	18	Rite Aid OMDL 0020541 and	
23	Hart-	First Notice of Deposition 18	15	Rite_Aid_OMDL_0020542	
24	30(b)(6)-	Pursuant to Rule 30(B)(6)	16		
	2	and Document Request	17		
		Pursuant to Rule 30(B)(2)	18	- - -	
		and Rule 34 to Defendant	19	PREVIOUSLY MARKED EXHIBITS USED	
		Rite Aid of Maryland,	20		
		Inc., d/b/a Rite Aid and	21		
		Mid-Atlantic Customer	22	Rite Aid-Hart-15	
		Support Center, Inc.	23		
	Hart-	Email chain, top one dated 41	24		
	30(b)(6)-	2010-11-24, Bates stamped			
	3	Rite_Aid_OMDL_0046695			

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1	Hart-	Index of Binder 113	1	- - -	
2	30(b)(6)-		2	DEPOSITION SUPPORT INDEX	
3	4		3	- - -	
4	Hart-	Email chain, top one dated 135	4		
5	30(b)(6)-	16 Sep 2011, Bates stamped	5	Direction to Witness Not to Answer	
	5	MCKMDL00632923 through			
		MCKMDL00632925	6	Page Line	
	Hart-	Email dated 2011-02-01, 175		132 19	
	30(b)(6)-	Bates stamped	7		
	6	Rite_Aid_OMDL_0013134	8		
		through	9		
		Rite_Aid_OMDL_0013136	10	Request for Production of Documents	
	Hart-	Press Release entitled 179			
	30(b)(6)-	"Akron Doctor Pleads	11	Page Line	
	7	Guilty to Illegally	12		
		Prescribing Painkillers,	13		
	Hart-	Indictment, Case No.: 182	14	Stipulations	
	30(b)(6)-	5:14CR096	15	Page Line	
	8		16		
	Hart-	Press Release, "Rite Aid 188	17		
	30(b)(6)-	Corporation and	18		
	9	Subsidiaries Agree to Pay	19	Question Marked	
		\$5 Million in Civil	20	Page Line	
		Penalties to Resolve	21		
		Violations in Eight States	22		
		of the Controlled	23		
		Substances Act," 2 pages	24		
	Hart-	Order of the State Board 197			
	30(b)(6)-	of Pharmacy, Docket Number			
	10	D-110127-163			
	Hart-	Order of the State Board 214			
	30(b)(6)-	of Pharmacy Docket Number			
	11	D-100621-134			
	Hart-	Project Initiation for 504 221			
	30(b)(6)-	Suspicious Order			
	12	Monitoring, Bates stamped			
		Rite_Aid_OMDL_0040184			
		through			
		Rite_Aid_OMDL_0040198			

<p style="text-align: right;">Page 10</p> <p>1 THE VIDEOGRAPHER: We're now on 2 the record. My name is David Lane, 3 videographer from Golkow Litigation 4 Services. Today's date is January 31, 5 2019. Our time is 9:38 a.m. This 6 deposition is taking place in 7 Philadelphia, Pennsylvania in the matter 8 of National Opiate Litigation, MDL. 9 Our deponent today is Janet 10 Getzey Hart. Counsel will be noted on 11 the stenographic record. Our court 12 reporter is Ann Marie Mitchell. 13 Ms. Hart, I just want to remind 14 you, you're still under oath. 15 MR. PIFKO: Can we get people on 16 the phone to just state their name and 17 firm and who they represent real quick? 18 MS. LIABO: Hi, this is Miriam 19 Liabo from Jones Day on behalf of 20 Walmart. 21 MS. McENROE: Anybody else? 22 MS. WATSON: This is Sylvia 23 Watson from Jackson Kelly on behalf of 24 AmeriSource Bergen.</p>	<p style="text-align: right;">Page 12</p> <p>1 Q. So you understand that you're 2 still under oath? Do you understand that? 3 A. Yes. 4 Q. Okay. Yes? Sorry, I spoke over 5 you. 6 A. Yes, yes. 7 Q. And we'll fast forward through a 8 bunch of the ground rules. I know we covered 9 that yesterday and had your deposition taken. 10 So you understand that your 11 testimony here today is under penalty of perjury. 12 Correct? 13 MS. McENROE: Objection to form. 14 THE WITNESS: I do. 15 BY MR. PIFKO: 16 Q. And you understand that if you're 17 untruthful or intentionally dishonest in some 18 way, that you could be subject to criminal 19 penalties or civil penalties or some other sort 20 of punishment from the court. 21 Do you understand that? 22 MS. McENROE: Objection to form. 23 THE WITNESS: I do. 24 BY MR. PIFKO:</p>
<p style="text-align: right;">Page 11</p> <p>1 MR. PIFKO: Anyone else? 2 MR. MALOY: This is John Maloy 3 from Morgan Lewis on behalf of Rite Aid. 4 MR. PIFKO: Anyone else? 5 - - - 6 JANET GETZEY HART, after having 7 been previously duly sworn, continued to 8 be examined and testified as follows: 9 - - - 10 EXAMINATION 11 - - - 12 BY MR. PIFKO: 13 Q. All right. Now that we got that 14 out of the way. 15 My name is Mark Pifko. We kind 16 of met yesterday a little bit. I'm going to be 17 asking you some questions today. I represent the 18 plaintiffs in the litigation. 19 MR. PIFKO: So -- was she 20 administered the oath? 21 THE REPORTER: She's still under 22 oath from yesterday. 23 MR. PIFKO: Okay. 24 BY MR. PIFKO:</p>	<p style="text-align: right;">Page 13</p> <p>1 Q. Is there any reason why you can't 2 provide truthful and accurate testimony today? 3 A. There is not. 4 Q. Do you have any medical 5 condition, are you taking any medication or 6 undergoing any sort of treatment that would 7 impact your ability to tell the truth? 8 A. No. 9 Q. Are you taking any medication or 10 suffering from any condition that would impact 11 your memory? 12 A. No. 13 Q. From time to time, I'm obviously 14 going to be asking you, as you know from 15 yesterday, about past events. Okay? And I don't 16 want you to guess, but I do -- I am entitled to 17 your best recollection of events. Okay? 18 A. Yes. 19 Q. Okay. You intend to provide that 20 today? 21 A. I do. 22 Q. All right. So one other thing 23 that's different today, we'll get into it in just 24 a moment, as opposed to yesterday, is that</p>

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1 today's deposition, you are providing testimony
 2 on behalf of the company.
 3 Do you understand that?
 4 A. I do.
 5 Q. Okay. So when I ask you
 6 questions -- I'm going to hand you a notice in a
 7 minute and there's some topics.
 8 When I ask you questions within
 9 those topics, you're going to be providing
 10 testimony on behalf of the company, not just you.
 11 Do you understand that?
 12 A. I do.
 13 Q. All right. Let's start by
 14 handing you that document. I'm sure that you saw
 15 it in preparing for today's deposition.
 16 - - -
 17 (Deposition Exhibit No.
 18 Hart-30(b)(6)-1, Second Notice of
 19 Deposition Pursuant to Rule 30(B)(6) and
 20 Document Request Pursuant to Rule
 21 30(B)(2) and Rule 34 to Defendant Rite
 22 Aid of Maryland, Inc., d/b/a Rite Aid and
 23 Mid-Atlantic Customer Support Center,
 24 Inc., was marked for identification.)

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1 - - -
 2 BY MR. PIFKO:
 3 Q. I'm handing you what's marked as
 4 Hart-30(b)(6) Exhibit 1, which is a copy of a
 5 deposition notice.
 6 Have you seen this before? Take
 7 a minute to look at it.
 8 MS. McENROE: Mark, if it would
 9 help, I'm happy to stipulate to which
 10 topics from the second notice --
 11 MR. PIFKO: Yeah, I'm going to
 12 ask her. I have got your letter in front
 13 of me.
 14 MS. McENROE: Great. Thank you.
 15 THE WITNESS: I'm fine.
 16 BY MR. PIFKO:
 17 Q. All right. Have you seen this
 18 before?
 19 A. I have.
 20 Q. When was the last time you saw
 21 this?
 22 A. Within the past few days.
 23 Q. Okay. When was the first time
 24 you recall seeing this?

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1 A. Months ago.
 2 Q. Sometime in the third quarter of
 3 last year?
 4 A. Seems familiar, yes.
 5 Q. So you see if you -- there's
 6 numbered pages on the bottom.
 7 If you turn to the page that's
 8 numbered 6, it's got "Subject Matters for
 9 Testimony," letters A through O.
 10 Do you see that?
 11 MS. McENROE: I think you may be
 12 looking at notice 1 and you may have
 13 handed us notice 2. That may be what's
 14 going on.
 15 The second notice is the one that
 16 you handed us.
 17 MR. PIFKO: That's Will's fault.
 18 We can hand her both of them.
 19 I'll ask you some questions about that.
 20 I'll hand you notice 1 in just a
 21 minute. Thanks for clarifying.
 22 BY MR. PIFKO:
 23 Q. So with respect to notice 2, you
 24 see that there's topics that start on -- well,

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1 they do the same thing. They start on page 6
 2 here.
 3 Do you see that?
 4 A. I do.
 5 Q. Okay. And they go through page
 6 11.
 7 Do you see that?
 8 A. I do.
 9 Q. So looking at this -- this is
 10 called the second notice.
 11 Do you understand yourself to be
 12 designated for topics 6, 12, 17, 18, 20, 21 and
 13 22?
 14 A. 6, 12 -- what were the other
 15 numbers?
 16 Q. 17, 18, 20, 21 and 22.
 17 MS. McENROE: Just preserving for
 18 the record that 20, 21 and 22 are as
 19 modified by a ruling from Special Master
 20 Cohen.
 21 THE WITNESS: I do.
 22 BY MR. PIFKO:
 23 Q. Is there any reason why you can't
 24 provide testimony on those topics today?

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<p>1 A. There is not.</p> <p>2 Q. Let's look at the first notice.</p> <p>3 - - -</p> <p>4 (Deposition Exhibit No.</p> <p>5 Hart-30(b)(6)-2, First Notice of</p> <p>6 Deposition Pursuant to Rule 30(B)(6) and</p> <p>7 Document Request Pursuant to Rule</p> <p>8 30(B)(2) and Rule 34 to Defendant Rite</p> <p>9 Aid of Maryland, Inc., d/b/a Rite Aid and</p> <p>10 Mid-Atlantic Customer Support Center,</p> <p>11 Inc., was marked for identification.)</p> <p>12 - - -</p> <p>13 BY MR. PIFKO:</p> <p>14 Q. Which is marked as Exhibit 2.</p> <p>15 Take a moment to review that and</p> <p>16 let me know when you're done.</p> <p>17 A. (Reviewing document.)</p> <p>18 Okay.</p> <p>19 Q. Have you seen Exhibit 2 before?</p> <p>20 A. I have.</p> <p>21 Q. When was the last time you saw</p> <p>22 Exhibit 2?</p> <p>23 A. Within the past few days.</p> <p>24 Q. When was the first time you</p>	<p>1 would have been around a few months ago, like the</p> <p>2 other notice, roughly?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. If you turn to page 6 of</p> <p>5 Exhibit 2, you see there's a bunch of letter</p> <p>6 topics that goes from page 6 to page 7.</p> <p>7 Are you there?</p> <p>8 A. I am.</p> <p>9 Q. Do you understand yourself to be</p> <p>10 designated to speak on behalf of the company with</p> <p>11 respect to topics A through N?</p> <p>12 Take a minute to look at them.</p> <p>13 A. I do.</p> <p>14 Q. Is there any reason why you can't</p> <p>15 provide testimony on behalf of the company with</p> <p>16 respect to topics A through N in Exhibit 2?</p> <p>17 A. There is not.</p> <p>18 Q. Do you know what diversion is?</p> <p>19 MS. McENROE: Objection to form.</p> <p>20 THE WITNESS: I do.</p> <p>21 BY MR. PIFKO:</p> <p>22 Q. What's your understanding of what</p> <p>23 diversion is?</p> <p>24 A. Diversion is any time that a</p>
Page 19	Page 21
<p>1 believe you saw Exhibit 2?</p> <p>2 A. I don't remember when I first saw</p> <p>3 it.</p> <p>4 Q. Do you believe it would have been</p> <p>5 on or around the same time you saw Exhibit 1?</p> <p>6 A. A little after. Oh, this one</p> <p>7 here is Exhibit 1 that we're talking about now?</p> <p>8 Q. I'm asking about Exhibit 2.</p> <p>9 A. Okay. Exhibit 2 is the first</p> <p>10 notice, though. Right?</p> <p>11 Q. Right.</p> <p>12 A. So I would have saw the first</p> <p>13 notice before the second notice.</p> <p>14 Q. Okay. That's your recollection,</p> <p>15 is that you saw the first one before you saw the</p> <p>16 second one?</p> <p>17 A. I believe so.</p> <p>18 Q. Just so you know, they're dated</p> <p>19 the same day.</p> <p>20 Does that refresh your</p> <p>21 recollection at all about when you saw them?</p> <p>22 A. It does not.</p> <p>23 Q. Okay. All right. Well, you see</p> <p>24 on page 6 -- well, so you believe, though, it</p>	<p>1 controlled substance gets out of the normal</p> <p>2 channel of controlled substance delivery to a</p> <p>3 patient, not to the patient based upon a valid</p> <p>4 medical intent.</p> <p>5 Q. Do you understand that Rite Aid</p> <p>6 has a duty to prevent diversion?</p> <p>7 MS. McENROE: Objection, calls</p> <p>8 for a legal conclusion.</p> <p>9 THE WITNESS: I do.</p> <p>10 BY MR. PIFKO:</p> <p>11 Q. Do you understand that during</p> <p>12 certain relevant time periods to this case, Rite</p> <p>13 Aid was a, what's called a distributor under the</p> <p>14 Controlled Substances Act?</p> <p>15 A. I do.</p> <p>16 Q. What's your understanding of how</p> <p>17 Rite Aid fit into a definition of a distributor</p> <p>18 under the Controlled Substances Act?</p> <p>19 MS. McENROE: Objection to form.</p> <p>20 THE WITNESS: Rite Aid</p> <p>21 distributed its Schedule III, IV and V</p> <p>22 controlled substances to our various Rite</p> <p>23 Aid locations.</p> <p>24 BY MR. PIFKO:</p>

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1 Q. And Rite Aid purchased those
2 products directly from manufacturers?
3 A. I believe so, yes.
4 Q. And then warehoused them and
5 ultimately shipped them to its stores?
6 A. That is correct.
7 Q. And so you understand as a
8 distributor that Rite Aid had a duty to prevent
9 diversion. Correct?
10 MS. McENROE: Objection to form.
11 THE WITNESS: I do.
12 BY MR. PIFKO:
13 Q. And do you also have an
14 understanding that Rite Aid had a duty to
15 identify, report and halt the shipment of
16 suspicious orders?
17 MS. McENROE: Objection to form.
18 THE WITNESS: I do.
19 BY MR. PIFKO:
20 Q. Okay. And do you know what a
21 suspicious order is?
22 A. I do.
23 Q. What is a suspicious order?
24 A. A suspicious order is an unusual

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1 frequency, an unusual pattern, orders of that
2 nature.
3 Q. Bear with me a second here.
4 Do you understand the purpose for
5 which Rite Aid, as a registrant under the
6 Controlled Substances Act, has a duty to prevent
7 diversion?
8 MS. McENROE: Objection to form.
9 THE WITNESS: I do.
10 BY MR. PIFKO:
11 Q. What's your understanding of what
12 that purpose is?
13 A. Our purpose is to make sure the
14 controlled substances are kept in the normal
15 channel of distribution and dispensing to the end
16 patient, make sure that it does not end in the
17 hands of any other one that's not in that
18 distribution channel.
19 Q. Do you understand that one of the
20 purposes of preventing diversion is to protect
21 the public health?
22 MS. McENROE: Objection to form.
23 THE WITNESS: I do.
24 BY MR. PIFKO:

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1 Q. And is that consistent with Rite
2 Aid's understanding of why we want to prevent
3 diversion?
4 A. It is.
5 Q. I believe -- I was just looking
6 for it, but I couldn't find it, but I believe
7 that's in one of Rite Aid's policy documents.
8 Do you recall seeing that?
9 A. I do.
10 Q. So you agree that that's a stated
11 policy of Rite Aid, is that they want to prevent
12 diversion because they want to protect the public
13 health. Correct?
14 MS. McENROE: Objection to form.
15 THE WITNESS: I'm not sure if
16 it's part of a policy or a statement or
17 whatever, but yes.
18 BY MR. PIFKO:
19 Q. All right. You understand that
20 Rite Aid has a duty to -- we talked earlier, to
21 identify, report and halt the shipment of any
22 suspicious orders that it may find in its system.
23 Correct?
24 MS. McENROE: Objection to form.

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1 THE WITNESS: I do.
2 BY MR. PIFKO:
3 Q. And did you also understand that
4 Rite Aid has a duty to design a system to
5 identify suspicious orders. Correct?
6 MS. McENROE: Objection to form.
7 And Mark, this is pretty heavily on the
8 legal interpretation end, from which
9 Special Master Cohen specifically ruled
10 the topics do not cover, despite how
11 they're drafted. So I just wanted to
12 make sure that we don't go too far down
13 that road.
14 THE WITNESS: Could you repeat
15 the question?
16 BY MR. PIFKO:
17 Q. Yeah.
18 I was just asking, you understand
19 that Rite Aid has a duty to design and maintain a
20 system to identify and report suspicious orders.
21 Correct?
22 MS. McENROE: Objection to form.
23 THE WITNESS: I do.
24 BY MR. PIFKO:

<p style="text-align: right;">Page 26</p> <p>1 Q. Did Rite Aid have such a system?</p> <p>2 A. We did.</p> <p>3 Q. When did Rite Aid first design a</p> <p>4 system to identify and report and halt the</p> <p>5 shipment of suspicious orders?</p> <p>6 A. I came into the Rite Aid</p> <p>7 corporate office in 1995. And at that point</p> <p>8 there was a program to report suspicious orders.</p> <p>9 Q. How about a program to identify</p> <p>10 suspicious orders?</p> <p>11 A. I think same time.</p> <p>12 Q. Do you know anything about who</p> <p>13 designed the system that you're describing to</p> <p>14 identify and report suspicious orders?</p> <p>15 A. I do not.</p> <p>16 Q. Okay. But it's your testimony</p> <p>17 that that system was in place in 1995?</p> <p>18 A. Yes.</p> <p>19 Q. Were there any changes to that</p> <p>20 system? You've been employed by, we discussed</p> <p>21 yesterday, by Rite Aid since the '80s; is that</p> <p>22 correct?</p> <p>23 MS. McENROE: Objection to form.</p> <p>24 THE WITNESS: Yes.</p>	<p style="text-align: right;">Page 28</p> <p>1 the question?</p> <p>2 BY MR. PIFKO:</p> <p>3 Q. Yeah.</p> <p>4 Do you believe that there's never</p> <p>5 been a suspicious order that has occurred within</p> <p>6 Rite Aid's distribution center -- system?</p> <p>7 MS. McENROE: Objection to form.</p> <p>8 THE WITNESS: I do.</p> <p>9 BY MR. PIFKO:</p> <p>10 Q. So it's your testimony that</p> <p>11 there's never been a suspicious order that's</p> <p>12 occurred within Rite Aid's distribution of</p> <p>13 Schedule III controlled substances?</p> <p>14 MS. McENROE: Objection to form.</p> <p>15 THE WITNESS: I do.</p> <p>16 BY MR. PIFKO:</p> <p>17 Q. Are you familiar with the</p> <p>18 scheduling of controlled substances?</p> <p>19 A. I am.</p> <p>20 Q. Are you aware of -- that there's</p> <p>21 Schedule I through VI?</p> <p>22 A. Schedule I through V.</p> <p>23 Q. I'm sorry, I through V, yes.</p> <p>24 A. Yes.</p>
<p style="text-align: right;">Page 27</p> <p>1 MS. McENROE: It's okay. Give me</p> <p>2 time to get my objections in.</p> <p>3 BY MR. PIFKO:</p> <p>4 Q. So you're familiar with Rite</p> <p>5 Aid's policies and procedures with respect to</p> <p>6 suspicious orders and preventing diversion.</p> <p>7 Correct?</p> <p>8 A. Yes.</p> <p>9 Q. And are you familiar with whether</p> <p>10 there are any changes to Rite Aid's system to</p> <p>11 identify and report suspicious orders from 1995</p> <p>12 to present?</p> <p>13 A. I believe that the system itself</p> <p>14 has been in place. There has been minor changes</p> <p>15 or tweaks along the way, but the basics of the</p> <p>16 system have remained the same.</p> <p>17 Q. To your knowledge, has Rite Aid</p> <p>18 ever identified a suspicious order?</p> <p>19 A. We have not.</p> <p>20 Q. Do you believe that there's never</p> <p>21 been a suspicious order that's occurred within</p> <p>22 Rite Aid's distribution system?</p> <p>23 MS. McENROE: Objection to form.</p> <p>24 THE WITNESS: Could you repeat</p>	<p style="text-align: right;">Page 29</p> <p>1 Q. Okay. Keeping you on your toes.</p> <p>2 Do you have an understanding</p> <p>3 about what the differences are as you move along</p> <p>4 the schedules?</p> <p>5 A. I do.</p> <p>6 MS. McENROE: Objection to form.</p> <p>7 BY MR. PIFKO:</p> <p>8 Q. From I to V?</p> <p>9 MS. McENROE: Objection to form.</p> <p>10 THE WITNESS: I do.</p> <p>11 BY MR. PIFKO:</p> <p>12 Q. What is your understanding of the</p> <p>13 difference between a Schedule I controlled</p> <p>14 substance and a Schedule V controlled substance?</p> <p>15 MS. McENROE: Just real quick, I</p> <p>16 want to make sure I understand.</p> <p>17 Which topic is this part of?</p> <p>18 MR. PIFKO: I'm asking the</p> <p>19 questions. I don't need to identify the</p> <p>20 topics.</p> <p>21 MS. McENROE: I understand. So</p> <p>22 you're asking topics from a 30(b)(6)</p> <p>23 witness designated for specific</p> <p>24 testimony.</p>

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1 MR. PIFKO: You can object to
2 scope, but I'm going to ask the
3 questions.
4 MS. McENROE: I can object to
5 scope. I'm just trying to understand
6 where you're going with this, so --
7 MR. PIFKO: I'm asking her
8 questions.
9 MS. McENROE: -- if you're just
10 laying the basis for something in scope,
11 then that's fine, Mark. But I just want
12 to make sure that we're not going to
13 spend all day, she's a talented
14 pharmacist with a lot of experience,
15 getting every dot of the Controlled
16 Substances Act, make sure that we're
17 staying within the nature of the topics.
18 So that all being said, I will
19 say objection to scope.
20 BY MR. PIFKO:
21 Q. All right. So let's go back to
22 my question.
23 Do you understand the difference
24 between a Schedule I substance and a Schedule V

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1 substance?
2 MS. McENROE: Objection to form.
3 THE WITNESS: I do.
4 BY MR. PIFKO:
5 Q. What is your understanding of the
6 difference between those substances, as you move
7 through the scale?
8 A. Schedule I has an abusive -- has
9 the most abusive properties. They are typically
10 the illicit drugs. Schedule V is the least
11 addictive, and they are the products that may be
12 able to be sold over the counter.
13 Q. And so as you moved down the
14 scale, there's -- all these substances have been
15 identified by the government as having a
16 potential for abuse. Correct?
17 MS. McENROE: Objection to form.
18 THE WITNESS: Abuse, addiction,
19 yes.
20 BY MR. PIFKO:
21 Q. And as you move down the scale,
22 there's a lower potential for abuse and
23 addiction; is that correct?
24 A. As you go to Schedule V, there is

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1 less potential for that, yes.
2 Q. And Rite Aid was a distributor of
3 Schedule III controlled substances. Correct?
4 MS. McENROE: Objection to form.
5 THE WITNESS: We were.
6 BY MR. PIFKO:
7 Q. But you also sold Schedule II
8 controlled substances. Correct?
9 MS. McENROE: Objection to form.
10 I just want to make sure we are
11 clear in which "you" we are using here.
12 So she is here testifying as a 30(b)(6)
13 witness for Rite Aid Maryland, Inc.,
14 doing business as Mid-Atlantic Customer
15 Support Center, which is the Perryman
16 Distribution Center. So I just want to
17 make sure the witness is not going to be
18 getting confused or misled that it's her
19 personally or the Rite Aid family of
20 companies.
21 BY MR. PIFKO:
22 Q. You understand that Rite Aid
23 Corporation operates pharmacies, correct, through
24 its various subsidiaries?

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1 A. I do.
2 Q. And those pharmacies sell
3 Schedule II substances. Correct?
4 A. Those pharmacies dispense
5 Schedule II controlled substances.
6 Q. And they also sell Schedule III
7 substances. Correct?
8 A. Yes.
9 Q. So we talked about the system for
10 identifying, reporting and halting the shipments
11 of suspicious orders.
12 You said that there was a system
13 in place in 1995. Correct?
14 A. Yes.
15 Q. And then I asked you if there
16 were changes over the years. And you said there
17 might have been some little changes, but the
18 basic functions of the system have been the same;
19 is that correct?
20 A. That is correct.
21 Q. All right. So can you tell me
22 what are the basic functions or features of the
23 Rite Aid system to identify, report and halt the
24 shipment of suspicious orders?

<p style="text-align: right;">Page 34</p> <p>1 MS. McENROE: Objection to form. 2 THE WITNESS: I can. 3 BY MR. PIFKO: 4 Q. All right. Let's start with the 5 first element of Rite Aid's system. 6 And let's talk about what was in 7 place in 1995, and then we'll move through and 8 talk about any potential changes. Okay? 9 MS. McENROE: Objection in terms 10 of scope of the time period. Discovery 11 starts in this case in 2006 for the 12 relevant purposes. So I know the witness 13 said that she started in this role in 14 1995, but I just want to make sure we 15 don't end up spending all day on portions 16 of discovery that are not even within 17 scope. 18 BY MR. PIFKO: 19 Q. Do you recall my question? 20 A. Please repeat it. 21 Q. All right. 22 MR. PIFKO: Do you recall Special 23 Master Cohen ordered objections to stay 24 under 10 seconds, so let's try to</p>	<p style="text-align: right;">Page 36</p> <p>1 report and halt the shipment of suspicious 2 orders? 3 MS. McENROE: Objection to form. 4 Yeah. We're here giving 30(b)(6) 5 testimony on behalf of the distribution 6 center that I mentioned earlier. You 7 know, in terms of -- that distribution 8 center wasn't even in existence in 1997, 9 Mark. So I'm worried that we're really 10 going far afield here on a number of 11 different avenues. 12 BY MR. PIFKO: 13 Q. Can you answer the question? 14 MS. McENROE: Objection on 15 multiple grounds. 16 THE WITNESS: I can. 17 BY MR. PIFKO: 18 Q. Okay. So let's start. 19 What was the first feature of the 20 system? 21 A. The Rite Aid suspicious order 22 monitoring program had various features to it. 23 One of the features was a threshold quantity of 24 5,000 dosage units for any single NDC, National</p>
<p style="text-align: right;">Page 35</p> <p>1 remember that rule. 2 MS. McENROE: I talk real fast. 3 I think it was under 10 seconds. 4 MR. PIFKO: All right. 5 BY MR. PIFKO: 6 Q. What I asked you was to identify 7 the features of Rite Aid's system to identify, 8 report and halt the shipment of suspicious 9 orders. Okay? 10 A. Okay. 11 Q. And what we talked about is you 12 said you're familiar with the system that was in 13 place from 1995 until present. Correct? 14 A. Correct. 15 Q. Okay. And so what I want you to 16 do is start with the features of the system that 17 you're familiar with from the earliest time frame 18 from which you're familiar, which you said was 19 1995. Correct? 20 A. Correct. 21 Q. And then we'll go through various 22 changes that may have occurred over the years. 23 So let's start in 1995, what's 24 the first step in Rite Aid's system to identify,</p>	<p style="text-align: right;">Page 37</p> <p>1 Drug Code, product per order. 2 Q. Do you know how that threshold 3 was calculated? 4 A. As far as how was it established? 5 Q. Right. 6 A. I do not know. 7 Q. Do you know why 5,000 was picked? 8 A. I do not know. 9 Q. Throughout the entirety of your 10 knowledge, that threshold was the same. Correct? 11 A. That threshold remained the same 12 until we stopped distributing controlled 13 substances in 2014. 14 Q. So from 1995 to 2014, the 15 threshold was always 5,000 dosage units per NDC? 16 MS. McENROE: Objection to form. 17 BY MR. PIFKO: 18 Q. Per week? Per order? Sorry. 19 A. That is correct. 20 Q. And what was the same threshold 21 at all stores, with a handful of exceptions. 22 Correct? 23 MS. McENROE: Objection to form. 24 THE WITNESS: That is correct.</p>

<p style="text-align: right;">Page 38</p> <p>1 BY MR. PIFKO:</p> <p>2 Q. Do you know approximately how</p> <p>3 many stores had exceptions to that threshold?</p> <p>4 A. My guess would be less than a</p> <p>5 dozen.</p> <p>6 Q. Can you name them?</p> <p>7 A. I can name a few. Rite Aid 777.</p> <p>8 I believe Rite Aid number 408. Those are the two</p> <p>9 that I remember.</p> <p>10 Q. Do you know where those are</p> <p>11 located? How about 777, where is that located?</p> <p>12 A. It was located in New Jersey.</p> <p>13 Q. How about 408?</p> <p>14 A. I don't know where that one is</p> <p>15 located.</p> <p>16 Q. You can't recall any others?</p> <p>17 A. There were others with</p> <p>18 exceptions. I believe yesterday we discussed</p> <p>19 3151.</p> <p>20 Q. Do you know where that store is</p> <p>21 located?</p> <p>22 A. Ohio.</p> <p>23 Q. Do you know where in Ohio?</p> <p>24 A. I believe Akron.</p>	<p style="text-align: right;">Page 40</p> <p>1 A. I don't recall being a part of</p> <p>2 those discussions.</p> <p>3 Q. Do you know what the nature of</p> <p>4 those discussions were with the logistics team to</p> <p>5 change those numbers?</p> <p>6 MS. McENROE: Objection to form.</p> <p>7 THE WITNESS: I do not.</p> <p>8 BY MR. PIFKO:</p> <p>9 Q. Do you know why they were having</p> <p>10 such discussions?</p> <p>11 MS. McENROE: Objection to form.</p> <p>12 THE WITNESS: I think part of it</p> <p>13 always to look at the program and</p> <p>14 determine if it's adequate or not.</p> <p>15 BY MR. PIFKO:</p> <p>16 Q. And was at some point someone was</p> <p>17 concerned that it wasn't adequate?</p> <p>18 MS. McENROE: Objection to form.</p> <p>19 THE WITNESS: No. I did not say</p> <p>20 that. I said they were looking at it to</p> <p>21 continue to make sure that it was</p> <p>22 adequate.</p> <p>23 - - -</p> <p>24 (Deposition Exhibit No.</p>
<p style="text-align: right;">Page 39</p> <p>1 Q. Any others?</p> <p>2 A. Those are the ones that I</p> <p>3 remember.</p> <p>4 Q. So that's a feature of Rite Aid's</p> <p>5 suspicious order monitoring system. And that</p> <p>6 feature has been the same over the entirety of</p> <p>7 your knowledge up to and including 2014, when you</p> <p>8 stopped distributing Schedule III controlled</p> <p>9 substances. Correct?</p> <p>10 MS. McENROE: Objection to the</p> <p>11 form.</p> <p>12 THE WITNESS: To the best of my</p> <p>13 knowledge, yes.</p> <p>14 BY MR. PIFKO:</p> <p>15 Q. Were there ever any discussions</p> <p>16 about changing that number?</p> <p>17 MS. McENROE: Objection to form.</p> <p>18 THE WITNESS: I don't recall any</p> <p>19 discussions. There may have been</p> <p>20 discussions within the logistics team to</p> <p>21 change the number.</p> <p>22 BY MR. PIFKO:</p> <p>23 Q. Were you part of any of those</p> <p>24 discussions?</p>	<p style="text-align: right;">Page 41</p> <p>1 Hart-30(b)(6)-3, Email chain, top one</p> <p>2 dated 2010-11-24, Bates stamped</p> <p>3 Rite_Aid_OMDL_0046695, was marked for</p> <p>4 identification.)</p> <p>5 - - -</p> <p>6 BY MR. PIFKO:</p> <p>7 Q. I'm handing you what's marked as</p> <p>8 Exhibit 3.</p> <p>9 For the record, Exhibit 3 is a</p> <p>10 single page document Bates labeled</p> <p>11 Rite_Aid_OMDL_0046695.</p> <p>12 Let me know -- take a minute to</p> <p>13 review that and let me know when you're done.</p> <p>14 A. (Reviewing document.)</p> <p>15 Q. Are you ready?</p> <p>16 A. I'm ready.</p> <p>17 Q. Have you seen this before?</p> <p>18 A. I have.</p> <p>19 Q. When was the last time you saw</p> <p>20 this?</p> <p>21 A. Within the past few days.</p> <p>22 Q. Is this something you reviewed in</p> <p>23 preparing for your 30(b)(6) deposition?</p> <p>24 A. Yes.</p>

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1 Q. In preparing for the 30(b)(6)
2 deposition, did you discuss this document with
3 anyone from the company?
4 A. From Rite Aid?
5 Q. Yes.
6 A. I did not.
7 Q. Who is Owen McMahon?
8 A. Owen, at this time, was our
9 senior director of generic purchasing and
10 specialty programs.
11 Q. Is he still with the company?
12 A. He is.
13 Q. What's his current role?
14 A. Vice president of pharmacy
15 purchasing in some capacity.

[REDACTED]

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[REDACTED]

Page 44

[REDACTED]

Page 45

[REDACTED]

Page 46

[REDACTED]

Page 48

[REDACTED]

Page 47

[REDACTED]

Page 49

[REDACTED]

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Age Group	Should Take Action	Should Not Take Action
18-29	95%	5%
30-49	95%	5%
50-69	95%	5%
70+	95%	5%

1 fill quantities of prescriptions that have been
2 stolen, do you believe that order could be
3 suspicious?
4 MS. McENROE: Objection to form.
5 THE WITNESS: Can you repeat the
6 question?
7 BY MR. PIFKO:
8 Q. Yeah.
9 If a store has a certain amount
10 of inventory of controlled substances, and for
11 purposes of this discussion let's keep it
12 Schedule III controlled substances. Okay?
13 So if a store has a material
14 volume of Schedule III controlled substances
15 stolen and it needs to place an order to
16 replenish that inventory as a result of the
17 theft, do you believe that that could be a
18 suspicious order?
19 MS. McENROE: Objection to form.
20 THE WITNESS: I do not believe
21 it's a suspicious order. If you are --
22 theft and diversion in a store does not
23 impact a suspicious order, per se.
24 BY MR. PIFKO:

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Response	Percentage
U.S. should take action	85%
U.S. should not take action	15%

23 BY MR. PIFKO:

24 Q. If an order is placed in order to

1 Q. Do you believe that if the
2 quantities of Schedule III controlled substances
3 that are ordered are increased because theft is
4 occurring at the store, that that could be a
5 suspicious order?

6 MS. McENROE: Objection, form.

7 THE WITNESS: It could not be --
8 excuse me -- a suspicious order to the
9 distribution center in simply ordering
10 the product. The distribution center
11 does not know the nature of what is going
12 to happen to those drugs.

13 BY MR. PIFKO:

14 Q. Do you believe that the
15 distribution center and the company has a duty to
16 know that the theft is occurring and factor that
17 into their shipping of orders?

18 MS. McENROE: Objection to form.

19 THE WITNESS: Can you repeat the
20 question? I'm sorry.

21 BY MR. PIFKO:

22 Q. Yeah.
23 Do you believe that the
24 distribution center and Rite Aid in general have

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1 a duty to know that the theft is occurring and
2 factor that into their evaluation of whether
3 they're shipping orders to a specific store?
4 MS. McENROE: Objection to form.
5 THE WITNESS: I believe Rite Aid
6 has a duty, from a pharmacy registrant
7 perspective, to identify theft and
8 diversion and to follow DEA protocol and
9 report it.
10 From the distribution side,
11 there -- just because simply a store has
12 diversion of an associate does not mean
13 that an order would be suspicious.
14 BY MR. PIFKO:
15 Q. Have you heard the term "know
16 your customer"?
17 A. I have.
18 Q. What's your understanding of what
19 that teams?
20 MS. McENROE: Objection, form.
21 THE WITNESS: Know your customer
22 is that you identify everyone that you
23 ship to. In the course of Rite Aid, our
24 customers are ourselves. To know your

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1 customer, you should make sure that their
2 licenses are correct. You should make
3 sure that they have a physical building
4 that is licensed by the Board of
5 Pharmacy. You should make sure that they
6 have a DEA registration. Knowing your
7 customer is making sure that they are
8 registered, that they are a pharmacy, and
9 they are entitled to be able to receive
10 and dispense controlled substances.
11 In Rite Aid's case, our customer
12 is ourselves. So from a licensing
13 perspective, the licensing coordinator is
14 in our corporate office. And so we know
15 the stores are licensed. We know the
16 whole process.
17 BY MR. PIFKO:
18 Q. This question came up yesterday,
19 so I know you know the answer, but I'll ask you
20 for purposes of the 30(b)(6).
21 Do you know what red flags of
22 diversion are?
23 MS. McENROE: Objection to form.
24 THE WITNESS: I know what red

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1 flags are, yes.
2 BY MR. PIFKO:
3 Q. What's your understanding of what
4 red flags of diversion are?
5 MS. McENROE: Objection to form.
6 THE WITNESS: Red flags are
7 identified by the Drug Enforcement
8 Administration for a pharmacist when
9 dispensing a controlled substance
10 prescription. There are numerous red
11 flags. They include, does the pharmacist
12 know the patient, is it a known patient.
13 They include, does the pharmacist know
14 the prescriber, is it a known prescriber.
15 They include a valid patient relationship
16 between the prescriber and the patient.
17 It also requires you to check to
18 determine, from a red flag standpoint, is
19 it in the geographic area. They
20 require -- a red flag can be to look at a
21 prescription to determine if it was a
22 forged prescription or not, to determine
23 if perhaps another pharmacy had declined
24 to fill and had noted on the

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1 prescription. Red flag would be to make
2 sure that the prescription was issued for
3 a valid medical reason by a prescriber in
4 the course of their due diligence and
5 their specialty.
6 BY MR. PIFKO:
7 Q. Did Rite Aid ever consider any
8 red flags of diversion with respect to whether it
9 was going to fill an order placed by any of its
10 pharmacies for a Schedule III controlled
11 substance?
12 MS. McENROE: Objection to form.
13 THE WITNESS: Rite Aid and all of
14 our pharmacies identify red flags. If a
15 red flag is identified, the prescription
16 is not filled at that particular time and
17 declined and provided back to the
18 patient. Should that be -- should there
19 be a red flag that meets our criteria, it
20 would not be dispensed.
21 BY MR. PIFKO:
22 Q. Do you believe that theft is one
23 of the red flags of diversion?
24 MS. McENROE: Objection to form.

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1 THE WITNESS: Theft is not a red
2 flag of the prescription processing.
3 Part of theft is diversion, yes, but
4 involved in the red flag process, it's
5 not diversion as such in a red flag
6 process.
7 BY MR. PIFKO:
8 Q. When I asked you about "know your
9 customer," do you believe that the
10 know-your-customer requirement includes a
11 requirement to know about whether the red flags
12 of diversion are occurring at your customer's
13 location?
14 MS. McENROE: Objection to form.
15 THE WITNESS: I believe know your
16 customer, yes, would include if the
17 pharmacies are following the red flags
18 process.
19 BY MR. PIFKO:
20 Q. Okay. And so with respect to
21 Rite Aid's duty to prevent diversion and to
22 identify suspicious orders, did Rite Aid have any
23 system in place to consider red flags of
24 diversion when an order was placed at any of its

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1 pharmacies?
2 MS. McENROE: Objection to form.
3 THE WITNESS: If red flags were
4 identified when a prescription was being
5 dispensed, the prescription would not be
6 dispensed. So that would not result in
7 an order to the distribution center.
8 BY MR. PIFKO:
9 Q. So it's your testimony that in
10 every instance throughout the relevant time
11 period, if a red flag occurred, it was always
12 caught and observed at the pharmacy and never
13 resulted in a prescription being dispensed?
14 MS. McENROE: Objection to form.
15 THE WITNESS: Can you repeat
16 that, please?
17 BY MR. PIFKO:
18 Q. Yes.
19 So my question is, it's your
20 testimony that is it -- are you saying that in
21 every instance throughout the relevant time
22 period, if a red flag occurred, it was always
23 caught and observed at the pharmacy, and that
24 prescription was never dispensed?

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1 MS. McENROE: Objection to form.
2 THE WITNESS: I would never say
3 in every instance.
4 BY MR. PIFKO:
5 Q. Okay. In most instances?
6 A. In the majority, yes.
7 MS. McENROE: Objection to form.
8 Mark, we've been going about an
9 hour.
10 Are you looking for a break, too?
11 THE WITNESS: (Witness nods
12 head.)
13 MS. McENROE: Okay. The witness
14 is asking for a break, too.
15 MR. PIFKO: Okay.
16 THE VIDEOGRAPHER: Going off the
17 record at 10:27 a.m.
18 - - -
19 (A recess was taken from
20 10:27 a.m. to 10:41 a.m.)
21 - - -
22 THE VIDEOGRAPHER: We're back on
23 the record at 10:41 a.m.
24 BY MR. PIFKO:

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1 Q. Welcome back.
2 Okay. Before we took a break, we
3 were talking about red flags of diversion and
4 knowing your customer. Okay?
5 A. Yes.
6 Q. Do you remember that?
7 So I was asking you if there was
8 a way that Rite Aid factors in the red flags of
9 diversion into a suspicious order that could be
10 placed -- or, sorry, an order that could be
11 placed.
12 MS. McENROE: Objection to form.
13 BY MR. PIFKO:
14 Q. Do you recall that discussion?
15 A. Yes.
16 Q. Okay. And am I correct that your
17 testimony was that Rite Aid factors in red flags
18 of diversion into its order system because the
19 pharmacist would identify that and that
20 prescription would never be filled; is that
21 correct?
22 MS. McENROE: Objection to form.
23 THE WITNESS: Could you do that
24 again, please?

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1 BY MR. PIFKO:
2 Q. Yep.
3 My question is -- well, why don't
4 you just tell me. How does Rite Aid factor red
5 flags of diversion into an order for a Schedule
6 III controlled substance?
7 MS. McENROE: Objection to form.
8 THE WITNESS: If there was a red
9 flag that was identified for a
10 prescription in a pharmacy, the
11 pharmacist has the ability to assess that
12 prescription and determine if their
13 prescription should be filled or not.
14 Simply because there's one red flag
15 doesn't mean that the prescription should
16 not be filled.
17 That being said, if there's a red
18 flag and the prescription is not filled,
19 and the pharmacist refuses to fill it,
20 there's no way that that's ever going to
21 get to be an order to go to the
22 distribution center, because at that
23 point, there's no dispensing of the drug.
24 There's no need for replenishment from

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1 the distribution center.
2 BY MR. PIFKO:
3 Q. Is it your testimony that red
4 flags of diversion are always caught and stopped
5 by pharmacists before a prescription is filled?
6 MS. McENROE: Objection to form.
7 THE WITNESS: Not all red flags
8 are caught before diversion occurs or
9 before they're filled.
10 BY MR. PIFKO:
11 Q. So there are occasions when an
12 order is placed from a pharmacy where a
13 prescription has been filled even though there
14 were red flags; is that correct?
15 MS. McENROE: Objection to form.
16 THE WITNESS: Can you repeat,
17 please?
18 BY MR. PIFKO:
19 Q. You agree that there are
20 instances where a prescription is placed to be
21 filled at a Rite Aid pharmacy that may have
22 indicia of red flags. Correct?
23 MS. McENROE: Objection to form.
24 THE WITNESS: There could be a

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1 prescription presented with red flags,
2 yes.
3 BY MR. PIFKO:
4 Q. And you agree that that's not
5 always caught by a pharmacist. Correct?
6 MS. McENROE: Objection to form.
7 THE WITNESS: The majority of the
8 time it would be caught. But, yes, there
9 are instances where a red flag is not
10 caught or red flags are not caught.
11 BY MR. PIFKO:
12 Q. So my question is, in these
13 instances where red flags are not caught, is
14 there any system in place where Rite Aid takes
15 those red flags into account when considering
16 whether to ship an order to one of its
17 pharmacies?
18 MS. McENROE: Objection to form.
19 THE WITNESS: There is not.
20 BY MR. PIFKO:
21 Q. Does Rite Aid have any system in
22 place to evaluate whether prescriptions are being
23 placed without legitimate medical need at its
24 pharmacies when it's filling an order of Schedule

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1 III controlled substances for that pharmacy?
2 MS. McENROE: Objection to form.
3 THE WITNESS: The red flags
4 process is in place in Rite Aid
5 pharmacies to identify fraudulent
6 activity or activity related to a
7 prescription to identify the red flags on
8 a prescription for controlled substances.
9 BY MR. PIFKO:
10 Q. The only process in place is at
11 the pharmacy through the pharmacist; is that
12 correct?
13 MS. McENROE: Objection to form.
14 THE WITNESS: When dispensing a
15 prescription, the pharmacist is the front
16 line. And yes, they're a licensed
17 individual that's trained and schooled to
18 be able to identify red flags. So yes,
19 the red flags and the prescription is
20 identified by the pharmacist. It has
21 nothing to do with the distribution
22 center.
23 BY MR. PIFKO:
24 Q. All I'm trying to understand, is

<p style="text-align: right;">Page 66</p> <p>1 there any way that that kind of information is 2 passed on to the distribution center. 3 So is your testimony that 4 potential red flag activity at a store location 5 is never passed on to the distribution center? 6 MS. McENROE: Objection to form. 7 THE WITNESS: To the best of my 8 knowledge, the red flag activity is not 9 passed on to the distribution center back 10 when we distributed controlled substances 11 up till 2014. 12 BY MR. PIFKO: 13 Q. And there's no -- that means that 14 there was no system in place to consider red 15 flags of diversion at the distribution center 16 when an order was being shipped. Correct? 17 MS. McENROE: Objection to form. 18 THE WITNESS: That is correct. 19 The red flags are determined by the 20 pharmacist that is in the pharmacy in 21 whether or not to dispense the 22 prescription. 23 BY MR. PIFKO: 24 Q. Let's go back to the thresholds.</p>	<p style="text-align: right;">Page 68</p> <p>1 BY MR. PIFKO: 2 Q. So from the entirety of its 3 operation, that was the threshold when Rite Aid 4 was shipping Schedule III controlled substances 5 as a distributor. Correct? 6 MS. McENROE: Objection to form. 7 THE WITNESS: Correct. 8 BY MR. PIFKO: 9 Q. And we talked about a meeting, 10 when I showed you Exhibit 3, discussing the 11 thresholds. Correct? 12 A. We discussed a meeting. 13 Q. So you -- we talked about the 14 people who are present at the meeting, and you 15 said that Andy Palmer was there because he had 16 the asset protection program. Correct? 17 A. That is correct. 18 Q. And you clarified that NaviScript 19 is never used to identify or report a suspicious 20 order. Correct? 21 MS. McENROE: Objection to form. 22 THE WITNESS: That is correct. 23 BY MR. PIFKO: 24 Q. All right. And so Maggie Perritt</p>
<p style="text-align: right;">Page 67</p> <p>1 Remember we were talking about 2 attributes of Rite Aid's system to identify, 3 report and halt suspicious orders. 4 MS. McENROE: Objection to form. 5 BY MR. PIFKO: 6 Q. You recall us discussing that? 7 A. I do. 8 Q. Okay. So it was your testimony 9 that thresholds are one attribute of the system. 10 Correct? 11 A. That is correct. 12 Q. And other than a -- less than a 13 dozen, all store locations had a threshold of 14 5,000 dosage units per NDC per order. Correct? 15 MS. McENROE: Objection. 16 THE WITNESS: Correct. 17 BY MR. PIFKO: 18 Q. And that was a threshold that was 19 in place for multiple decades. Correct? 20 MS. McENROE: Objection to form. 21 THE WITNESS: Yes. Keep in mind 22 for this, the Perryman Distribution 23 Center did not open until I believe 1998 24 or somewhere in that time frame.</p>	<p style="text-align: right;">Page 69</p> <p>1 was another person who was there from operations. 2 Correct? 3 A. Yes. 4 Q. And you invited her to that 5 meeting? 6 A. I don't remember who invited 7 whom, but yes, she was at the meeting. 8 Q. Why was she invited to the 9 meeting? 10 A. Maggie was the pharmacy 11 operations person at the meeting that knew 12 algorithms, and also was the operator there that 13 would be impacted by thresholds. 14 Q. When you say she would be 15 impacted by thresholds, what do you mean? 16 A. The service to the stores and the 17 pharmacies obtaining their drugs. Pharmacy 18 operations obviously is in charge of who -- the 19 pharmacists that are dispensing the drugs and the 20 operating of the pharmacies. 21 Q. So if there was a change in the 22 threshold, it would impact the pharmacy 23 operations? 24 MS. McENROE: Objection to form.</p>

<p style="text-align: right;">Page 70</p> <p>1 THE WITNESS: It could. It</p> <p>2 could.</p> <p>3 BY MR. PIFKO:</p> <p>4 Q. How would it impact the pharmacy</p> <p>5 operations?</p> <p>6 A. It may impact their ordering. It</p> <p>7 may impact the amount of product that they would</p> <p>8 have on their shelves. There could be any number</p> <p>9 of ways that it could be impacted.</p> <p>10 Q. Was that part of the discussion</p> <p>11 at this meeting?</p> <p>12 A. At this meeting -- I don't</p> <p>13 recall.</p> <p>14 Q. Do you recall discussing -- you</p> <p>15 said Maggie had some knowledge about algorithms;</p> <p>16 is that correct?</p> <p>17 A. That is correct.</p> <p>18 Q. Do you recall a specific</p> <p>19 discussion with Maggie about algorithms and</p> <p>20 suspicious order monitoring at this meeting?</p> <p>21 A. I recall what occurred at the</p> <p>22 meeting was that we were trying to put down in</p> <p>23 detail the algorithms that were used in our</p> <p>24 suspicious order monitoring program so that we</p>	<p style="text-align: right;">Page 72</p> <p>1 to a government agency, such as the DEA,</p> <p>2 concerning the algorithms that may have been</p> <p>3 used?</p> <p>4 MS. McENROE: Objection to form.</p> <p>5 THE WITNESS: I believe the</p> <p>6 distribution centers had information as</p> <p>7 far as obtaining the orders and the</p> <p>8 thresholds and part of their suspicious</p> <p>9 order program, but they did not know the</p> <p>10 detail of the algorithms to the effect of</p> <p>11 what was included and how the algorithms</p> <p>12 work. There's numerous algorithms that</p> <p>13 come together. And they did not have all</p> <p>14 of that, no.</p> <p>15 They had a document to provide to</p> <p>16 the DEA. They really did provide -- that</p> <p>17 was sufficient for DEA inspections 2005,</p> <p>18 2009, prior to this meeting. So the</p> <p>19 documentation on suspicious order</p> <p>20 monitoring was at the distribution center</p> <p>21 and adequate for the DEA.</p> <p>22 BY MR. PIFKO:</p> <p>23 Q. There's a document that was</p> <p>24 created in 2005?</p>
<p style="text-align: right;">Page 71</p> <p>1 could communicate it effectively to our</p> <p>2 distribution centers on a one-page document so</p> <p>3 that the DC would have something to present to</p> <p>4 government agency, the Drug Enforcement</p> <p>5 Administration, that would visit and do an</p> <p>6 inspection.</p> <p>7 Q. So prior -- and this meeting</p> <p>8 occurred, if we look back at Exhibit 3, the email</p> <p>9 is at the end of 2010. Agree?</p> <p>10 A. Yes.</p> <p>11 Q. Do you have a recollection about</p> <p>12 when this meeting occurred after that email?</p> <p>13 A. Maybe early 2011. I don't</p> <p>14 recall.</p> <p>15 Q. That's your best estimate, is</p> <p>16 early 2011 when this meeting occurred?</p> <p>17 A. Best estimate, yes. I don't -- I</p> <p>18 don't recall truly.</p> <p>19 Q. You said that you wanted to put</p> <p>20 detail down concerning the algorithms so that you</p> <p>21 could communicate them to the distribution</p> <p>22 centers.</p> <p>23 Prior to this discussion, did the</p> <p>24 distribution centers have any document to present</p>	<p style="text-align: right;">Page 73</p> <p>1 A. There was a DEA inspection in</p> <p>2 2005 at the distribution center. And as part of</p> <p>3 their standard operating procedures in suspicious</p> <p>4 order monitoring program, the distribution center</p> <p>5 at that time had passed inspection.</p> <p>6 Q. There was another inspection in</p> <p>7 2009?</p> <p>8 A. There was another inspection in</p> <p>9 2009.</p> <p>10 Q. Which specific facility are we</p> <p>11 talking about with respect to the 2005 and 2009</p> <p>12 inspections?</p> <p>13 A. We are speaking of the Perryman</p> <p>14 Distribution Center.</p> <p>15 Q. You're opening a binder.</p> <p>16 Can you tell me what that is?</p> <p>17 A. Sure. It's a binder of documents</p> <p>18 that I asked counsel to prepare for me to review</p> <p>19 for the deposition.</p> <p>20 Q. And you're looking for something</p> <p>21 specific in there right now?</p> <p>22 A. I was looking for a memo on the</p> <p>23 DEA audit summary for 2005 and 2009.</p> <p>24 Q. It's your understanding that</p>

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1 there was some documentation concerning
2 algorithms that may have been provided during
3 those inspections?
4 MS. McENROE: Objection to form.
5 THE WITNESS: I was not at the
6 inspections. I do not know. I know that
7 there was an inspection and what was
8 provided to the DEA through their normal
9 routine audit, which is looking for
10 suspicious order monitoring. The
11 distribution centers had no violations at
12 those times.
13 BY MR. PIFKO:
14 Q. You don't know what was provided
15 to the DEA in connection with those inspections,
16 though?
17 MS. McENROE: Objection to form.
18 THE WITNESS: I do not.
19 BY MR. PIFKO:
20 Q. Did the DEA provide any written
21 documentation after those inspections?
22 A. I will check.
23 Q. If you can narrate for me what
24 you're checking, I would appreciate it.

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1 A. Sure.
2 I am narrating a communication
3 from Kevin Mitchell, who was our senior manager
4 of regulatory compliance, for the distribution
5 centers as an update of the inspection.
6 Typically when you have a DEA
7 inspection, they will leave you -- if there are
8 deficiencies, they typically do not leave you any
9 documentation. If you have passed a DEA
10 inspection, you can receive a letter of
11 admonition.
12 And in this particular
13 correspondence, the words were -- the closing
14 comments specifically mentioned that they have no
15 words of advice for the staff for improvement.
16 It was a flawless audit.
17 Q. Can you read the -- you are
18 looking at a document that was produced in the
19 case. Correct?
20 A. Yes.
21 Q. What's the Bates number for that
22 document? Do you know what that -- on the bottom
23 right-hand corner, there's a number.
24 A. 0047171.

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1 MS. McENROE: And that was a Rite
2 Aid produced document.
3 BY MR. PIFKO:
4 Q. There's some words before the
5 number.
6 Can you read those words, too?
7 A. Yes. Rite_Aid_OMDL_.
8 Q. Thanks.
9 So there was no DEA documentation
10 provided after that audit. Correct?
11 MS. McENROE: Objection to form.
12 THE WITNESS: Correct.
13 BY MR. PIFKO:
14 Q. The only documentation that you
15 have is a summary written by Kevin Mitchell?
16 MS. McENROE: Objection to form.
17 THE WITNESS: Yes.
18 BY MR. PIFKO:
19 Q. Let's talk about these algorithms
20 that you've been referring to.
21 So is it your testimony that
22 these algorithms are part of Rite Aid's
23 suspicious order monitoring system?
24 A. They are.

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1 Q. You've made it sound like there's
2 more than one?
3 A. Yes.
4 Q. Is that correct?
5 So what are the algorithms that
6 you contend are part of Rite Aid's suspicious
7 order monitoring system?
8 MS. McENROE: Objection to form.
9 THE WITNESS: In an overall
10 perspective, what happens is Rite Aid's
11 system, in order to place an order,
12 reviews a store's order history for the
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 At that particular point, it
17 places an order based on that individual
18 [REDACTED]
19 history. And it allows the store to
20 [REDACTED]
21 [REDACTED]
22 There are other factors that come
23 into play, such as a weighted moving
24 average, depending on what time the order

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1 is placed. There's calculate regular
2 movement averages, perform checks on
3 weeks with no movement.
4 So there's a series of
5 algorithms, but the general overall one
6 is looking at that specific store's data,
7 analyzing it, looking at what's on hand
8 in the store, and analyzing to determine
9 what order should be placed for that
10 store.
11 BY MR. PIFKO:
12 Q. Can orders be placed manually?
13 MS. McENROE: Object to the form.
14 THE WITNESS: Once the order gets
15 to the store, there is the ability for
16 the pharmacist to override the order,
17 yes.
18 BY MR. PIFKO:
19 Q. How does that process work, the
20 manual process?
21 A. If the algorithm says to order
22 60, and the pharmacist has an order for 90
23 tablets, then at that point the pharmacist can
24 override to get the additional tablets that they

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1 need in the order.
2 Q. So when an order is going to be
3 placed, the pharmacist has access to see what
4 that order is?
5 MS. McENROE: Objection.
6 THE WITNESS: Yes. The
7 pharmacist has to have access to see that
8 order.
9 BY MR. PIFKO:
10 Q. So it's in this automated system,
11 but then there's some screen where the pharmacist
12 can see what the automated system is calculating
13 for the order?
14 A. Yes.
15 Q. Is there a name for that screen?
16 A. I don't know what the name is.
17 Q. Is the pharmacist required to
18 check the order before it's placed every time?
19 A. Typically they do. I don't know
20 if it's required.
21 Q. And so orders are placed by Rite
22 Aid stores with a regular frequency. Correct?
23 A. Orders are placed once a week,
24 once every other week in a limited number of

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1 stores, and twice a week in a very limited number
2 of stores.
3 Q. So let me break that down.
4 So most -- what most -- what's
5 the ordering pattern for most stores?
6 A. Most stores, Rite Aid places an
7 order once a week.
8 Q. Some stores place two orders a
9 week?
10 A. Some stores place two orders a
11 week, yes.
12 Q. Some stores place orders every
13 two weeks?
14 A. Yes.
15 Q. Is there any other ordering
16 pattern that we haven't discussed?
17 A. No. The stores are -- once a
18 store is programmed in, they can't place
19 additional orders.
20 Q. Well, I'm just trying to
21 understand. So there's three categories here.
22 There's stores that order once a
23 week, which is most of the stores.
24 Then there's another category of

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1 stores that can order two orders in a week.
2 Correct?
3 A. Correct.
4 Q. And then there's another category
5 of stores that place one order every two weeks.
6 Correct?
7 A. Correct.
8 Q. And there's no other pattern
9 within Rite Aid for ordering. Correct?
10 MS. McENROE: Objection to form.
11 THE WITNESS: From the
12 distribution center, no.
13 BY MR. PIFKO:
14 Q. When you say most stores are on
15 this one order every week pattern, do you have an
16 understanding about the percentage of stores that
17 are in that pattern?
18 A. Best guess estimate is 90 percent
19 are on that pattern.
20 Q. How about stores that place two
21 orders a week, do you have a sense of the
22 percentage of stores that fit in that category?
23 A. Let's reduce the first one to
24 80 percent. Sorry.

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1 Q. Okay. So 80 percent of the
2 stores place one order every week. Correct?
3 A. Correct.
4 Q. What percentage of stores place
5 two orders a week?
6 A. To the best of my knowledge,
7 about 15 percent.
8 Q. What percentage of stores place
9 one order every two weeks?
10 A. 5 percent.
11 Q. The stores that place two orders
12 a week, are they located in specific areas?
13 MS. McENROE: Objection.
14 THE WITNESS: The stores that
15 order twice a week typically are in urban
16 areas such as Center City Philadelphia,
17 Center City New York City, where to get
18 one order once a week, there's not enough
19 room in the store itself to hold the
20 front end merchandise.
21 So an order needs to be shipped
22 twice a week in order to keep the
23 merchandise in the store to be sold.
24 That's typically when a store gets two

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1 orders a week.
2 BY MR. PIFKO:
3 Q. So those stores are -- the square
4 footage of the stores is somewhat smaller and
5 they don't have room for inventory.
6 Is that what you're saying?
7 A. Typically, yes.
8 Q. Are there other occasions where a
9 store would have two orders a week?
10 A. No. That's primarily it.
11 Q. What about stores that order once
12 every two weeks, is there some sort of
13 characteristic about those stores?
14 A. Those may be the lower volume
15 stores that dispense less prescriptions or have
16 less movement of front end merchandise. A lower,
17 slower front end selling front end merchandise
18 may get it every two weeks.
19 Q. And just for clarity, when you
20 talk about "front end," that's everything that's
21 not in the pharmacy. Correct?
22 A. That is correct.
23 Q. Is that an internal term that
24 Rite Aid uses, front end versus pharmacy

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1 operations?
2 A. I think a lot of people in the
3 industry use the term "front end" versus
4 pharmacy.
5 Q. But that's also a term that Rite
6 Aid uses?
7 A. Yes.
8 Q. Let's go back to the algorithms
9 of ordering.
10 So a pharmacist can see the order
11 that's about to be placed in advance of it being
12 placed. Correct?
13 A. Yes.
14 Q. How far in advance of it being
15 placed can a pharmacist see it?
16 A. I believe a day. And then they
17 have time to review it and then make changes,
18 should they decide to.
19 Q. And then when a pharmacist sees
20 the order that's about to be placed, they can
21 manually increase the volumes that are on the
22 order; is that correct?
23 MS. McENROE: Objection to form.
24 THE WITNESS: They can manually

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1 increase the volumes or they can manually
2 decrease the volumes.
3 BY MR. PIFKO:
4 Q. So you talked about the highest
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 A. Yes.
10 Q. Okay. But then the pharmacist
11 could manually increase that. Correct?
12 MS. McENROE: Objection to form.
13 THE WITNESS: They have the
14 ability to do that.
15 BY MR. PIFKO:
16 Q. Are there any other algorithms
17 that are in place?
18 A. There are other algorithms or
19 there are other pieces of the program which
20 allows no greater than 99 bottles to be
21 distributed in -- of any given product at any
22 given time as well.
23 Q. Can a pharmacist manually
24 override that?

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1 A. The pharmacist has the ability
2 to -- no. Pardon me. Step back.
3 The pharmacist cannot override
4 the 99 bottles.
5 Q. Are there any other algorithms in
6 place?
7 And you're looking at a document.
8 Can you read the Bates number of the document?
9 A. I can. 004 -- oh.
10 Rite_Aid_OMDL_0045426.
11 Q. Is there a name for that
12 document?
13 A. It is called pharmacy
14 replenishment algorithm. Okay.
15 There are other parts to the
16 algorithm that come into play as well, one of
17 them being making an account for what we call
18 90-day fills at the pharmacy.
19 So what that means is a patient
20 comes in and has a 30 -- a prescription for 30
21 days of like their blood pressure medication.
22 The patient chooses to get a 90-day supply or
23 three months at a time.
24 So instead of having the

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1 replenishment algorithm ship that product to the
2 store for the 30 days, 30 days and 30 days, the
3 algorithm takes into effect that that patient's
4 not coming back until 90 days. So you have to
5 have that product in 90 days instead of two 30
6 days. So that's part of the algorithm as well.
7 And that's the gist of the
8 algorithms. The rest of it can be found in the
9 document.
10 Q. Were there any changes to the
11 algorithms?
12 MS. McENROE: Objection to form.
13 THE WITNESS: To the best of my
14 knowledge, no.
15 BY MR. PIFKO:
16 Q. Then going back to this meeting,
17 Kevin Mitchell was another person who was
18 invited. Correct?
19 A. Correct.
20 Q. Why was he invited?
21 A. Kevin has responsibility for
22 the controlled -- had responsibility for the
23 controlled substance cages at the distribution
24 centers and was working with the DEA coordinators

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1 in each of the facilities.
2 Q. And why did that make him someone
3 that was invited to this meeting?
4 A. He owned the process of the
5 distribution of the controlled substances and the
6 pickers, was involved with -- directly involved
7 with the individual pickers that picked, the
8 operations of the controlled substance cages.
9 So because of that and impacting
10 thresholds, he was invited to the meeting. And
11 also he was the one that attended the Buzzeo
12 conference that wanted to have some discussion
13 around it.
14 Q. Were there any -- you talked
15 about putting together a document.
16 That was something that was
17 discussed at this meeting. Correct?
18 A. It was.
19 Q. Did this meeting ultimately
20 result in a document being created?
21 A. It did not.
22 Q. Why was that?
23 A. Several -- an individual at the
24 meeting left the company.

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1 Q. Who is that?
2 A. Maggie Perritt.
3 Q. And she was going to be
4 responsible for putting this documentation
5 together?
6 A. Yes.
7 Q. Do you know why she left?
8 A. To take a job elsewhere. She
9 moved to Florida.
10 Q. Did she make any comments on the
11 perceived sufficiency of Rite Aid's suspicious
12 order monitoring processes?
13 MS. McENROE: Objection to form.
14 THE WITNESS: After we had the
15 meetings -- the meeting, and everybody
16 came together, everyone was overly
17 confident that our suspicious order
18 monitoring program was adequate and met
19 DEA rule and regulation. The idea was
20 again to put everything together in one
21 space and in one document to be able to
22 provide for the DEA. There were no --
23 from Kevin to Andy to Maggie to myself,
24 there were no changes at that time that

<p style="text-align: right;">Page 90</p> <p>1 were noted to be made to the suspicious 2 order monitoring program, just to put it 3 into a format that could be provided to 4 governmental agencies when needed. 5 BY MR. PIFKO: 6 Q. Did anyone write down anything 7 after that meeting stating that they were 8 satisfied with Rite Aid's procedures? 9 MS. McENROE: Objection to form. 10 THE WITNESS: I don't know that 11 anyone said that they were satisfied with 12 it. There were communications from Kevin 13 asking to -- for Maggie to put it in so 14 that they could get it to distribution 15 centers, but I don't know that there was 16 anything that said everybody signed off 17 at the meeting. 18 BY MR. PIFKO: 19 Q. Are there any other features of 20 Rite Aid's procedures with respect to identifying 21 suspicious orders? 22 MS. McENROE: Objection to form. 23 THE WITNESS: Sure. There is an 24 asset protection side of our suspicious</p>	<p style="text-align: right;">Page 92</p> <p>1 mentioned the asset protection aspects? 2 A. Correct. 3 Q. When you say those are the three 4 components, that's what you were referring to? 5 A. Yes. 6 Q. Let's talk about the thresholds 7 for a moment. 8 So I want to talk about how they 9 work. 10 So every store, except for the 11 less than a dozen that you mentioned, has a limit 12 of 5,000 dosage units per NDC per order. 13 Correct? 14 A. Correct. 15 Q. And how is that limitation 16 implemented? 17 A. It is implemented by the pickers 18 in the distribution centers. 19 Q. How specifically does that occur? 20 A. In the distribution center, when 21 an item is lit up to be picked, there's a device 22 called the pick -- Pick-to-Light and it lights up 23 and there's a quantity of the item to be picked. 24 When it lights up, it will say the number of</p>
<p style="text-align: right;">Page 91</p> <p>1 order monitoring program which has a 2 number of KPIs which look at cycle counts 3 down, which look at ordering 4 abnormalities. So there are part of the 5 asset protection, part of the suspicious 6 order monitoring. And that can lead to 7 investigations into stores, into theft, 8 diversion, whatever it may be. 9 BY MR. PIFKO: 10 Q. But you testified earlier that 11 that system was never used to identify and report 12 a suspicious order. Correct? 13 MS. McENROE: Objection to form. 14 THE WITNESS: I did. 15 BY MR. PIFKO: 16 Q. Any other systems in place that 17 Rite Aid had to identify, report and halt the 18 shipment of suspicious orders? 19 MS. McENROE: Objection to form. 20 THE WITNESS: Those were the 21 major three components. 22 BY MR. PIFKO: 23 Q. So to be clear, we talked about 24 the thresholds, the algorithm and then you</p>	<p style="text-align: right;">Page 93</p> <p>1 packages to be picked. 2 If the picker sees, say, it's a 3 bottle of 100, 53 packages to be picked, they 4 will set -- they won't pick the item and they 5 will immediately report it to their supervisor. 6 Q. So an order is placed that 7 exceeds the threshold, the picker sees that on 8 the lighting system? 9 A. Pick-to-Light, yes. 10 Q. So the lighting system identifies 11 that it exceeds the threshold or the picker does? 12 MS. McENROE: Objection to form. 13 THE WITNESS: The picker does. 14 BY MR. PIFKO: 15 Q. So the pickers know that there's 16 this 5,000 dosage unit per NDC per order 17 requirement? 18 A. The pickers are very well versed 19 in the threshold, yes. 20 Q. Is there documentation that 21 they're provided with that tells them about that 22 threshold? 23 A. Each of the pickers has an 24 attestation that they understand the 5,000 dosage</p>

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1 unit limit.
2 Q. What do you mean by dosage unit?
3 A. A tablet, a capsule, any
4 individual dose.
5 Q. Okay. So the picker has to look
6 and see if it's 10 bottles of 50, they have to
7 make that calculation?
8 A. Yes. They make that calculation.
9 Pharmacy packages are typically bottles of 100 or
10 bottles of 500 or bottles of 1,000. So it's a
11 simple calculation. There's not half bottles or
12 anything along those lines. It's typically 100,
13 500 and 1,000.
14 Q. Is there any automation that
15 makes that calculation for them?
16 MS. McENROE: Objection to form.
17 THE WITNESS: From the
18 Pick-to-Light, there's not.
19 BY MR. PIFKO:
20 Q. So an order comes in and they --
21 if it says six bottles of 1,000, that exceeds the
22 threshold. Correct?
23 MS. McENROE: Objection to form.
24 THE WITNESS: Correct.

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1 BY MR. PIFKO:
2 Q. And then if it exceeds the
3 threshold, they have to call their supervisor?
4 A. They do.
5 Q. What do they do when they call
6 their supervisor?
7 A. The supervisor comes over, stops
8 the pick and then investigates the order to
9 determine, was it an auto ship order, what was
10 the nature of the order.
11 And at that particular time, they
12 would short the order to the 5,000 threshold and
13 then inquire from the store, if it wasn't an auto
14 replenishment order, why they ordered the
15 additional bottle.
16 Q. So let's break that process out a
17 little bit.
18 You said the supervisor comes
19 over and looks at the order.
20 How do they tell if it's an auto
21 ship order?
22 A. There is -- once they realize the
23 drug in that, there is a terminal in the
24 distribution center in the cage. They can go to

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1 a computer and determine if the order was on a
2 replenishment and an auto ship or not.
3 Q. And we talked earlier about
4 manually overriding by the pharmacist.
5 Do you recall that?
6 A. I do.
7 Q. Is that what you're
8 distinguishing between a manual override and an
9 order that's not -- that has no manual overrides?
10 A. Yes.
11 Q. How does the supervisor see that
12 on a computer screen?
13 A. You can identify the particular
14 drug. And it would say what your projected order
15 was.
16 So let's say that we took those
17 6,000 dosage units that you were discussing, they
18 would be able to see that the auto generated
19 order was six bottles to know that that was the
20 case.
21 Q. And if the pharmacist manually
22 overrides it, then there's something they can see
23 on there that shows that the amount is different
24 than what the auto replenishment system would

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1 have placed?
2 A. That is correct. I believe
3 some -- one of the exhibits that we discussed
4 yesterday had a screenshot of a suggested order
5 and where you could see what the suggested order
6 was, when we were discussing 3151.
7 Q. And so where it says suggested
8 order, that's what the auto replenishment system
9 would order?
10 A. That is correct.
11 Q. And so if it's an auto
12 replenishment system order, what is the
13 supervisor supposed to do?
14 A. The supervisor -- the order is
15 still cut to the normal -- to the 5,000
16 threshold. And at that point, the supervisor
17 would reach out and contact the pharmacy to
18 determine, did they need the 6,000 dosage units
19 and if they did, what was the reason. And if
20 they -- if it continued to go above what the
21 threshold was, how they could get an increase to
22 their threshold.
23 Q. Is the order filled before that
24 conversation occurs?

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1 MS. McENROE: Objection to form.
2 THE WITNESS: The order is
3 reduced to the 5,000, yes. And the
4 conversation can occur after the order is
5 reduced.
6 BY MR. PIFKO:
7 Q. Is there any documentation of
8 this conversation that occurs?
9 A. There is documentation in the
10 controlled drug cage.
11 Q. Is there a name of a form or a
12 logbook or something where they write down
13 anything about the conversation?
14 A. There is a log, yes.
15 Q. What's it called?
16 A. Let me look.
17 Q. And when you get to what you're
18 looking at, please identify the Bates number.
19 A. I'm going to flip through,
20 because I'm not finding what I wanted to see.
21 Q. What specifically are you looking
22 for?
23 A. There is a threshold log that is
24 created at the distribution centers that would

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1 identify who was called on what date and what
2 their response was.
3 Q. And when you're looking through
4 that binder -- I assume you've looked at all the
5 materials in the binder. Correct?
6 A. I have.
7 Q. Are you looking for an example of
8 a threshold log, or are you looking for a policy
9 that discusses it?
10 A. I'm looking for an example of a
11 threshold log. And it is called the Controlled
12 Drug Above Average Order Monitoring Log.
13 Q. And that's the document that --
14 where the supervisor notates any conversation
15 they may have had with the pharmacist?
16 A. That is correct.
17 Q. Is there any other place where
18 they would note their discussion?
19 A. This is the primary document
20 where they would note their discussion.
21 Q. You said primary.
22 Is there a secondary document?
23 A. They may have an Excel
24 spreadsheet that they would create a log as well,

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1 but this is the hands-on log in the cage.
2 Q. So any notes of any discussion
3 would be contained in that log?
4 A. Yes.
5 Q. What happens to that log after
6 it's -- where do they keep their log?
7 MS. McENROE: Objection to form.
8 THE WITNESS: They keep the log
9 in the controlled drug cage with the
10 other DEA records.
11 BY MR. PIFKO:
12 Q. Do they send it to anyone with
13 some frequency?
14 A. This log, they may send it to
15 myself or Kevin Mitchell or Chris Belli for
16 review as well.
17 Q. They may, but they're not
18 required to do so?
19 MS. McENROE: Objection to form.
20 THE WITNESS: They're not
21 required to do so.
22 BY MR. PIFKO:
23 Q. So they would call the pharmacist
24 to ask if they -- in a situation where the order

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1 exceeds the threshold, they would call the
2 pharmacist and ask if that was -- they intended
3 to place that order. Correct?
4 A. That is correct.
5 Q. But regardless of what the
6 pharmacist says, the order is cut to threshold?
7 MS. McENROE: Objection to form.
8 THE WITNESS: That is correct.
9 BY MR. PIFKO:
10 Q. And that may be shipped before
11 that conversation occurs. Correct?
12 A. That is also correct.
13 The number on the log that I'm
14 looking at, do you want that?
15 Q. Oh, yes. Thank you.
16 A. Okay. Rite_Aid_OMDL_0024039.
17 Q. Is there any other discussion
18 that occurs in the situation where an order
19 exceeds the threshold?
20 MS. McENROE: Objection to form.
21 THE WITNESS: The discussion is
22 at the distribution center when the order
23 is -- to the best of my knowledge, no.
24 BY MR. PIFKO:

<p style="text-align: right;">Page 102</p> <p>1 Q. So other than calling the 2 pharmacist to ask if they intended to place that 3 order, there is no other discussion. Correct? 4 A. If they're -- part of the policy 5 is if there was an order that there was deemed to 6 be suspicious, part of the policy then is to 7 contact government affairs, myself, to 8 investigate and determine if there was any 9 suspicion or diversion or anything. 10 Q. But that's never happened. 11 Correct? 12 A. It has not. 13 Q. No one has ever called you and 14 said an order is potentially suspicious? 15 MS. McENROE: Objection to form. 16 THE WITNESS: They have not. 17 BY MR. PIFKO: 18 Q. So other than this conversation 19 with the pharmacist, is there anything else that 20 happens? 21 MS. McENROE: Objection to form. 22 THE WITNESS: After the 23 conversation with the pharmacist, and if 24 the pharmacist deems that it's necessary,</p>	<p style="text-align: right;">Page 104</p> <p>1 documentation of the call. 2 BY MR. PIFKO: 3 Q. That's the only documentation of 4 any investigation that may be conducted. 5 Correct? 6 MS. McENROE: Objection to form. 7 THE WITNESS: Yes. The log is 8 the documentation. 9 BY MR. PIFKO: 10 Q. So let's talk about the override 11 or threshold increase. 12 Can the -- is it possible to make 13 a one-time override? 14 MS. McENROE: Objection to form. 15 THE WITNESS: I don't know that 16 it's ever been done, but it could be 17 possible for someone to call me and ask 18 for a one-time override. And yes, it 19 could be done. 20 BY MR. PIFKO: 21 Q. But to your knowledge, that's 22 never happened? 23 A. No. 24 Q. So when you mentioned that</p>
<p style="text-align: right;">Page 103</p> <p>1 that they need the additional product to 2 service their patients and meet their 3 patients' healthcare needs, then they can 4 reach out to their pharmacy district 5 manager who, at that term will determine, 6 yes, there is a valid need to increase 7 the threshold. And then ask me to 8 complete a threshold override so that 9 they can go above the 5,000 dosage units 10 based on valid patient need. 11 BY MR. PIFKO: 12 Q. Let's hold on to that for a 13 second. 14 Other than making a request to 15 increase the threshold, is there any other 16 discussion that occurs? 17 MS. McENROE: Objection to form. 18 THE WITNESS: There is not. 19 BY MR. PIFKO: 20 Q. And there's -- other than writing 21 down this log, there is no other documentation 22 that's made. Correct? 23 MS. McENROE: Objection to form. 24 THE WITNESS: The log is the</p>	<p style="text-align: right;">Page 105</p> <p>1 someone could ask for a threshold increase, that 2 would be a permanent increase for that location. 3 Correct? 4 MS. McENROE: Objection to form. 5 THE WITNESS: That would be an 6 increase that would be put in place and 7 then monitored routinely to make sure 8 that the usage and the reason for the 9 override would occur. 10 I would foresee a one-time 11 threshold override if there was a store 12 that had a night burglary and all of the 13 products were stolen from the store. So 14 obviously you would need to get product 15 into that store. So there may be the 16 potential for an override in situations 17 like that. 18 BY MR. PIFKO: 19 Q. Do you recall that ever 20 occurring? 21 A. There are night break-ins, yes. 22 I don't recall ever doing a threshold override, 23 but we do have night break-ins and armed 24 robberies, yes.</p>

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1 Q. In situations where an order is
2 placed to fill product that's been stolen in an
3 overnight robbery, is there any -- other than
4 reporting theft to the DEA, is there any
5 reporting of that order being potentially
6 suspicious?
7 MS. McENROE: Objection to form.
8 THE WITNESS: There is not.
9 BY MR. PIFKO:
10 Q. So then when we're talking about
11 this override of the threshold, the store can
12 then request that their threshold be increased?
13 A. If it was a one-time threshold,
14 typically the pharmacy district manager would
15 make a call and ask for it because of the
16 extenuating circumstance.
17 Q. But we talked this, there's never
18 been to your knowledge a one-time increase?
19 A. To the best of my knowledge, no.
20 Q. So if after this call -- so you
21 said that on the call, the supervisor asked the
22 pharmacist if they intended to place that order.
23 Correct?
24 MS. McENROE: Objection to form.

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1 THE WITNESS: Correct.
2 BY MR. PIFKO:
3 Q. And then if they say yes, the
4 next thing that the supervisor tells them is
5 how -- the process that they can go through to
6 get their threshold increased. Correct?
7 MS. McENROE: Objection to form.
8 THE WITNESS: That is correct.
9 BY MR. PIFKO:
10 Q. And so what is the process then
11 that a store would undertake to get a threshold
12 increase?
13 A. At that particular time, the
14 store would reach out to their pharmacy district
15 manager or immediate supervisor and say, my order
16 has been cut back. I can't service my patients.
17 Please seek a threshold increase on hydrocodone
18 for my particular store. And then the pharmacy
19 district manager would send that increase request
20 to myself or a member of my team.
21 Q. Is there a name for that team?
22 A. Regulatory compliance, government
23 affairs. It's both one and the same.
24 Q. So you talked yesterday about the

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1 organizational structure of your department.
2 Correct?
3 A. I did.
4 Q. Is there any sort of
5 suborganizational structure of people who would
6 just deal with threshold increases?
7 A. From the distribution center,
8 when we distributed, there was myself and Andrea
9 Bucher.
10 Q. So only the two of you would have
11 been the only people who would deal with
12 threshold increases?
13 A. I'm thinking of the time frame of
14 when individuals entered the department. There
15 is the possibility that another member of my
16 team, Amy Knisely, may have looked at thresholds
17 as well.
18 Q. Anyone else?
19 A. No.
20 Q. So you, Andrea Bucher or Amy
21 Knisely would be the only people that would have
22 evaluated a threshold increase request?
23 A. Yes.
24 Q. Is there a document that has to

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1 be created to get requests to threshold increase?
2 MS. McENROE: Objection to form.
3 THE WITNESS: There is no
4 document, just an email with the reason
5 why the increase is needed and -- on an
6 email.
7 BY MR. PIFKO:
8 Q. So the district manager sends an
9 email to you or one of the members of your team?
10 A. They do.
11 Q. Can the pharmacist go directly to
12 you?
13 A. If the pharmacists come directly
14 to us, we reroute it to the pharmacy district
15 manager in order to make sure that they're aware
16 that there's a request in for them to say, yes,
17 please look at the request.
18 MS. McENROE: Mark, we've been
19 going for about an hour, so whenever is a
20 good time for a break.
21 MR. PIFKO: Okay.
22 BY MR. PIFKO:
23 Q. The district manager has to
24 approve sending the request to you and your team?

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1 A. Yes.

2 Q. And even if a pharmacist makes it
3 directly, you then back route it to the district
4 manager to make sure that they would approve it
5 first?

6 A. Sure. I would -- I could make a
7 phone call to the pharmacy district manager and
8 say, hey, we have a request that came in from
9 your store 1234, you know, do you want us to work
10 on it or look at it. And they would say yes or
11 no once they determined if it was needed or not.
12 But yes.

13 Q. We'll take a break in just a
14 moment, but I want to ask you, are there any
15 criteria or attributes of the pharmacy that you
16 look for when you're evaluating a threshold
17 increase?

18 MS. McENROE: Objection to form.

19 THE WITNESS: For a threshold
20 increase, we look at usage from the
21 store, the order history, the suggested
22 order and an average of the monthly
23 dispensings of that particular drug for
24 the store.

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1 BY MR. PIFKO:

2 Q. When they make the request to
3 you, though, do they have to provide any specific
4 type of information in the email request?

5 A. Sometimes they do and sometimes
6 they don't. Sometimes they would say, a new
7 clinic opened down the street, depending on the
8 request that came in.

9 Q. But my question was different.
10 Are they required to provide
11 certain types of information in the email making
12 the request to you?

13 A. They are not required to put it
14 in the email, but that does not mean that we
15 don't follow up and get the extenuating
16 circumstance of why they're asking for the
17 increase.

18 Q. So the only thing that's required
19 is that they tell you that they want the
20 increase?

21 MS. McENROE: Objection to form.

22 THE WITNESS: In the email, yes.

23 But there would be follow-up with them.

24 BY MR. PIFKO:

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1 Q. Okay. And so then upon receiving
2 that, you would then look at the data for that
3 pharmacy as you just testified a few minutes ago?

4 A. We would. Similar to what we
5 looked at yesterday for 3151.

6 MR. PIFKO: Okay. We can take a
7 break.

8 MS. McENROE: Okay.

9 THE VIDEOGRAPHER: Going off the
10 record at 11:35 a.m.

11 - - -
12 (A recess was taken from
13 11:35 a.m. to 11:53 a.m.)

14 - - -
15 THE VIDEOGRAPHER: We're back on
16 the record at 11:53 a.m.

17 BY MR. PIFKO:

18 Q. I want to ask you some questions.
19 You brought a binder with you
20 today. Correct?

21 A. I did.

22 Q. Can you describe for the record
23 what that binder is?

24 A. Sure. It was documents that I

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1 asked counsel to put together and make copies of
2 for me as part of my testimony, or depositions so
3 that I could refer to them.

4 Q. I'm handing you what's marked as
5 Exhibit 4.

6 - - -
7 (Deposition Exhibit No.
8 Hart-30(b)(6)-4, Index of Binder, was
9 marked for identification.)

10 - - -
11 BY MR. PIFKO:

12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]

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[REDACTED]

Page 116

[REDACTED]

Page 115

[REDACTED]

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[REDACTED]

6 Q. Did you review all these

7 documents prior to today's deposition?

8 A. I did.

9 Q. Did you review any other

10 documents prior to today's deposition, beyond

11 what's in this -- that binder?

12 A. I did.

13 Q. What was the basis for reviewing

14 the other documents that you reviewed other than

15 the ones that are in the binder?

16 MS. McENROE: Objection. I just

17 want to caution the witness in terms of

18 not revealing substance discussed with

19 counsel, to avoid divulging any verbally,

20 of course, privileged information.

21 Can you restate the question?

22 Just so I make sure I understand how it's

23 not asking for privileged information.

24 BY MR. PIFKO:

<p style="text-align: right;">Page 118</p> <p>1 Q. Yeah.</p> <p>2 So you reviewed the documents in</p> <p>3 the binder to prepare for the deposition.</p> <p>4 Correct?</p> <p>5 A. Correct.</p> <p>6 Q. And you reviewed other documents</p> <p>7 that aren't in the binder to prepare for the</p> <p>8 deposition; is that correct?</p> <p>9 A. Correct.</p> <p>10 Q. Okay. When did you review the</p> <p>11 other documents that weren't in the binder?</p> <p>12 A. When I met with counsel to</p> <p>13 prepare.</p> <p>14 Q. Okay. It's like a two-inch</p> <p>15 binder that you have in front of you.</p> <p>16 It's basically full. Agreed?</p> <p>17 A. Yes.</p> <p>18 Q. And is it double-sided?</p> <p>19 A. Yes.</p> <p>20 Q. The volume of documents that you</p> <p>21 reviewed that's not in the binder, how does that</p> <p>22 compare to the volume of documents that's in the</p> <p>23 binder?</p> <p>24 MS. McENROE: Objection to form.</p>	<p style="text-align: right;">Page 120</p> <p>1 THE WITNESS: I believe all the</p> <p>2 documents that I reviewed were provided.</p> <p>3 BY MR. PIFKO:</p> <p>4 Q. How did you decide what documents</p> <p>5 that you wanted to review?</p> <p>6 A. I looked at the importance of the</p> <p>7 documents and what I might make part of my</p> <p>8 deposition. And picked some of the positives or</p> <p>9 like in the analytics part of it, the algorithms.</p> <p>10 I'm not an algorithm person, so I wanted to have</p> <p>11 something in front of me to be able to review.</p> <p>12 Q. Did you speak to anyone other</p> <p>13 than counsel to prepare for the deposition?</p> <p>14 A. Today or previously?</p> <p>15 Q. At any time.</p> <p>16 A. I have.</p> <p>17 Q. Okay. Who did you speak with?</p> <p>18 A. I spoke with Marcia Brumbaugh,</p> <p>19 who is in our IT department. Charlie Miller,</p> <p>20 Andy Palmer, Ron Chima.</p> <p>21 I'm trying to think.</p> <p>22 Those are the people within the</p> <p>23 corporation that I spoke to, or with or former.</p> <p>24 Q. How long did you speak to Marcia?</p>
<p style="text-align: right;">Page 119</p> <p>1 THE WITNESS: Many more documents</p> <p>2 were reviewed aside from this -- these</p> <p>3 27.</p> <p>4 BY MR. PIFKO:</p> <p>5 Q. So you would say there's a lot</p> <p>6 more documents that you reviewed to prepare for</p> <p>7 the deposition that aren't in the binder.</p> <p>8 Correct?</p> <p>9 A. There were.</p> <p>10 Q. You just went through the</p> <p>11 exercise of reading all those numbers. As we</p> <p>12 discussed, those are Bates numbers.</p> <p>13 Do you believe that all the</p> <p>14 documents that you reviewed to prepare for the</p> <p>15 deposition had those kinds of numbers on them?</p> <p>16 A. I believe so, yes.</p> <p>17 Q. Do you know if there's any</p> <p>18 documents that you reviewed to prepare for the</p> <p>19 deposition that were not provided to the</p> <p>20 plaintiffs in the litigation?</p> <p>21 MS. McENROE: What he means by</p> <p>22 that is, if it has a Bates number, that</p> <p>23 it would be provided to plaintiffs in the</p> <p>24 litigation.</p>	<p style="text-align: right;">Page 121</p> <p>1 A. I believe it was about an</p> <p>2 hour-and-a-half.</p> <p>3 Q. Did you have more than one</p> <p>4 conversation with her?</p> <p>5 A. I had one conversation with her.</p> <p>6 Q. What did you discuss with her to</p> <p>7 prepare for the deposition?</p> <p>8 MS. McENROE: Objection. I just</p> <p>9 want to interject. To the extent counsel</p> <p>10 was involved, that you shouldn't discuss</p> <p>11 the substance as privileged.</p> <p>12 THE WITNESS: Okay.</p> <p>13 MR. PIFKO: Well, preparations</p> <p>14 for a 30(b)(6) are not -- if she's trying</p> <p>15 to inform herself, they're not</p> <p>16 privileged.</p> <p>17 MS. McENROE: On the underlying</p> <p>18 facts, I agree with you. I just want to</p> <p>19 make sure that any of the substance that</p> <p>20 could have been discussed at the</p> <p>21 direction of counsel or with input from</p> <p>22 counsel is not divulged inadvertently.</p> <p>23 THE WITNESS: Can you repeat the</p> <p>24 question?</p>

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1 BY MR. PIFKO:
2 Q. Yeah.
3 I just want to know -- okay.
4 So you had one conversation with
5 Marcia to prepare for the deposition. Correct?
6 A. I did.
7 Q. Okay. And my question is, and
8 you said that you spoke to her for about an
9 hour-and-a-half. Correct?
10 A. That is correct.
11 Q. Sorry. You need to give an
12 audible response.
13 Did you speak to her in person or
14 on the phone?
15 A. In person.
16 Q. Who else was present at that
17 meeting?
18 A. Counsel.
19 Q. Anyone else?
20 A. That was it.
21 Q. Okay. And for purposes of
22 preparing of the deposition, what did you discuss
23 with her?
24 A. We discussed the algorithm.

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1 Q. Anything else?
2 A. That was primarily it.
3 Q. What's Marcia's background?
4 A. She is in our information -- IT
5 department.
6 Q. Does she have knowledge about the
7 algorithm?
8 A. She does.
9 Q. Did she have any role in
10 designing it?
11 A. I don't know that.
12 Q. Do you know how long she's been
13 with the company?
14 A. I'm going to say at least 15
15 years.
16 Q. Do you know if Marcia had any
17 role in modifying the algorithm at any time?
18 A. I don't know that.
19 Q. Okay. For purposes of preparing
20 for the deposition, what did Marcia tell you
21 about the algorithm?
22 A. We went over the document on the
23 algorithm that was involved in here, just to give
24 an overview of the algorithm.

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1 Q. And which tab was that?
2 A. Let me look.
3 That would be 7 and 8.
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 Q. You also spoke to Charlie Miller?
16 A. I did.
17 Q. Who is Charlie Miller?
18 A. Charlie Miller is a pharmacist
19 for Rite Aid at present.
20 Q. Where is he based?
21 A. He is in Pennsylvania.
22 Q. Does he work for a specific
23 store?
24 A. Yes, he's a pharmacist in a

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1 store. I don't know the location.
2 Q. Somewhere in Pennsylvania?
3 A. Yes.
4 Q. In Philadelphia, or you don't
5 know that?
6 A. I think closer to York.
7 Q. And what did you speak with Mr.
8 Miller to prepare for the deposition about?
9 MS. McENROE: Same objection,
10 same instruction, in terms of any
11 involvement of counsel, stay away from
12 any of that sort of privileged
13 discussion. But for the underlying
14 facts, so long as you're not divulging
15 privileged information, you may answer.
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]

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█ [REDACTED]
█ [REDACTED]
█ [REDACTED]
█ [REDACTED]
█ [REDACTED]

6 Q. So you spoke to him on the phone?
7 A. Yes.
8 Q. Less than 20 minutes?
9 A. Yes.
10 Q. Less than five minutes?
11 A. Yes.
12 Q. Andy Palmer, you spoke to him to
13 prepare for the deposition?
14 A. I did.
15 Q. How many times did you speak with
16 him?
17 A. Twice.
18 Q. Were those in person or on the
19 phone?
20 A. They were in person.
21 Q. When was the first time that you
22 spoke to Andy?
23 A. Two to three weeks ago.
24 Q. When was the second time you

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1 spoke to him?
2 A. Within the last week or two.
3 Q. The first conversation that you
4 had with him, how long was that?
5 A. A few hours.
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 BY MR. PIFKO:
21 Q. Anything else?
22 A. That was primarily that.
23 Q. Did you review any documents with
24 him to have that discussion?

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1 A. We did review some documents.
2 Q. What documents did you review?
3 A. Some Above Average logs.
4 Q. Anything else?
5 A. That was primarily it.
6 Q. Are you aware that Andy Palmer
7 was deposited in this case?
8 A. I am.
9 Q. Did you review his deposition
10 transcripts to prepare for this deposition?
11 A. I did not review Andy's
12 transcripts.
13 Q. Did you review any deposition
14 transcripts to prepare for this deposition?
15 A. I reviewed Chris Belli's
16 transcript, Rick Chapman's transcript and part of
17 Andrea Bucher's transcript.
18 Q. Only part of Andrea's transcript?
19 A. Yes.
20 Q. What part of her transcript did
21 you review?
22 A. I briefly read through
23 approximately the first half of it and then that
24 was it.

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1 Q. Why was is it that you only
2 looked at the first half?
3 A. I simply didn't have enough time.
4 Q. What did you learn from reviewing
5 her transcript?
6 MS. McENROE: Objection to form.
7 THE WITNESS: When she was --
8 MS. McENROE: You can answer.
9 THE WITNESS: What she was asked
10 questions about, similar to what I was
11 asked questions about.
12 BY MR. PIFKO:
13 Q. So then you said you met with
14 Andy Palmer again in the last week or so?
15 A. Yes.
16 Q. How long was that meeting?
17 A. An hour, an hour-and-a-half.
18 Q. What did you discuss during that
19 meeting?
20 MS. McENROE: Same objection and
21 same instruction with respect to not
22 divulging privileged communications. But
23 to the extent that you learned facts that
24 you're testifying about here today, you

1 may testify.



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Page 131

Page 132

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

5 Q. Did you discuss anything else

6 with Mr. Palmer in the second meeting?

7 MS. McENROE: Same instruction

8 with respect to privilege.

9 You may answer.

10 THE WITNESS: Not that I

11 remember, no.

12 BY MR. PIFKO:

13 Q. How about Ron Chima, what did

14 you --

15 MS. McENROE: Go ahead.

16 BY MR. PIFKO:

17 Q. What did you discuss with Mr.

18 Chima?

19 MS. McENROE: I'm going to object

20 and instruct the witness not to answer.

21 Mr. Chima is in-house counsel for Rite

22 Aid, and so I -- I have given you some

23 leeway with respect to the underlying

24 fact witnesses, but I'm sorry that I

Page 133

1 can't do the same with respect to Mr.
2 Chima.

3 BY MR. PIFKO:

4 Q. Did you discuss any facts that
5 you needed to know to serve as the 30(b)(6)
6 witness with Mr. Chima?

7 MS. McENROE: That's just a yes
8 or no.

9 THE WITNESS: I did not discuss
10 any facts.

11 BY MR. PIFKO:

12 Q. How long did you meet with Mr.
13 Chima?

14 A. Not long at all. I would -- you
15 know, a short meeting. Not even a meeting, a
16 conversation.

17 MS. McENROE: Okay.

18 BY MR. PIFKO:

19 Q. Was that in person?

20 MS. McENROE: You may answer that
21 question.

22 THE WITNESS: Yes.

23 BY MR. PIFKO:

24 Q. When was that?

Page 134

1 A. Way back when the whole process
2 started.
3 Q. So a few months ago?
4 A. Yes.
5 Q. On or around the time that you
6 first saw the notices?
7 A. Yes.
8 MR. PIFKO: Why don't take a --
9 it looks like it's 12:20, we'll take a
10 lunch break.
11 MS. McENROE: Sure.
12 THE VIDEOGRAPHER: Going off the
13 record at 12:16 p.m.
14 - - -
15 (A recess was taken from
16 12:16 p.m. to 1:10 p.m.)
17 - - -
18 THE VIDEOGRAPHER: Back on the
19 record at 1:10 p.m.
20 BY MR. PIFKO:
21 Q. Welcome back.
22 A. You too.
23 Q. Before the break, we were talking
24 about threshold increases.

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1 Do you recall that?
2 A. I do.
3 - - -
4 (Deposition Exhibit No.
5 Hart-30(b)(6)-5, Email chain, top one
6 dated 16 Sep 2011, Bates stamped
7 MCKMDL00632923 through MCKMDL00632925,
8 was marked for identification.)
9 - - -
10 BY MR. PIFKO:
11 [REDACTED]
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Page 137

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Page 142

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Page 144

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Page 143

[REDACTED]

Page 145

[REDACTED]

8 MS. McENROE: Objection to form.

9 And again, you already elicited the

10 testimony that Rite Aid did not consider

11 the McKesson thresholds to be part of the

12 suspicious order monitoring.

13 MR. PIFKO: You're giving a

14 speaking objection. You can't do that.

15 You've got to stop --

16 MS. McENROE: You said I could

17 have 10 seconds. And you're going far

18 beyond --

19 MR. PIFKO: No, no. I didn't say

20 you could have 10 seconds. You can

21 object to scope and that's it. You're

22 coaching the witness. You need to stop.

23 MS. McENROE: I'm not coaching

24 the witness. I'm trying to speak to you.

Page 150

[REDACTED]

Page 152

[REDACTED]

Page 151

[REDACTED]

Page 153

[REDACTED]

Page 154

[REDACTED]

Page 156

[REDACTED]

Page 155

[REDACTED]

Page 157

[REDACTED]

3 BY MR. PIFKO:

4 Q. Have you heard of the concept

5 "the holy trinity"?

6 MS. McENROE: Objection to form,

7 objection to scope.

8 THE WITNESS: I have.

9 BY MR. PIFKO:

10 Q. What does that mean to you?

11 A. The holy trinity is an opioid, a

12 benzodiazepam -- benzodiazepine and a muscle

13 relaxant prescribed for a person at one time.

14 Q. Is that a red flag?

15 MS. McENROE: Objection to form,

16 objection to scope.

17 THE WITNESS: The trinity is a

18 red flag, yes.

19 BY MR. PIFKO:

20 Q. And why is that a red flag?

21 MS. McENROE: Objection to form,

22 objection to scope.

23 THE WITNESS: The DEA has come

24 out and stated that there should be no

Page 158

1 reason why a prescriber should prescribe
2 those three medications for one patient
3 at one time.
4 BY MR. PIFKO:
5 Q. Would you also look at the nature
6 of the patients when you ran some of this
7 prescriber level analysis?
8 MS. McENROE: Objection to form,
9 objection to scope.
10 THE WITNESS: We would look at
11 patients if one -- when we ran our
12 analysis, if one patient stood out, we
13 would look at a particular patient, yes.
14 BY MR. PIFKO:
15 Q. Would you look at the actual
16 scripts that were written?
17 MS. McENROE: Objection to form,
18 objection to scope.
19 THE WITNESS: We would look at
20 original scripts as well.
21 BY MR. PIFKO:
22 Q. Would you look at the conditions
23 for which the prescription was being written?
24 MS. McENROE: Objection to form,

Page 159

1 objection to scope.
2 THE WITNESS: We would look if
3 there was a description.
4 BY MR. PIFKO:
5 Q. Okay. But you wouldn't -- what
6 would you do -- if there was a description, what
7 would you do with that information?
8 MS. McENROE: Objection to form,
9 objection to scope.
10 THE WITNESS: It would remain on
11 the prescription.
12 BY MR. PIFKO:
13 Q. But would you look if there
14 was -- a prescription was being written for a
15 medication that the reason on the prescription
16 seemed unusual to you?
17 MS. McENROE: Objection to form,
18 objection to scope.
19 THE WITNESS: Yes.
20 BY MR. PIFKO:
21 Q. And what would you do with that
22 information?
23 MS. McENROE: Objection to form,
24 objection to scope.

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1 THE WITNESS: We would look at
2 the patient profile and look at the type
3 of the prescriber and review it.
4 BY MR. PIFKO:
5 Q. Would you look at the physical
6 location of the prescriber in relationship to the
7 patient?
8 MS. McENROE: Objection to form,
9 objection to scope.
10 THE WITNESS: We could look at
11 that, yes.
12 BY MR. PIFKO:
13 Q. You would agree that one red flag
14 is if you have patients from out of the area
15 filling a prescription, that could be a red flag?
16 MS. McENROE: Objection to form,
17 objection to scope.
18 THE WITNESS: Patients traveling
19 distance to get a prescription filled
20 could be a red flag or it may not be a
21 red flag.
22 BY MR. PIFKO:
23 Q. Would you agree that -- in what
24 situation would it be a red flag?

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1 MS. McENROE: Objection to form,
2 objection to scope.
3 THE WITNESS: It could possibly
4 be a red flag if a patient lived two
5 hours away from a pharmacy and drove by
6 two other pharmacies to get to the
7 pharmacy where they were filling it.
8 BY MR. PIFKO:
9 Q. What about if a doctor is from
10 out of the area and the patient is bringing a
11 script from a far away doctor? Is that a red
12 flag?
13 MS. McENROE: Objection to form,
14 objection to scope.
15 THE WITNESS: Again, it all
16 depends on the type of doctor, where the
17 patient and the pharmacy is located.
18 There are things to consider if it's,
19 say, Johns Hopkins -- if the doctor is
20 from Johns Hopkins and the patient is
21 filling it on the Eastern Shore of
22 Maryland, I wouldn't -- that may not be a
23 red flag as obviously Johns Hopkins is a
24 medical hub type thing.

<p style="text-align: right;">Page 162</p> <p>1 BY MR. PIFKO:</p> <p>2 Q. On these occasions when you would</p> <p>3 run these prescriber analyses, would you document</p> <p>4 your findings?</p> <p>5 MS. McENROE: Objection to form,</p> <p>6 objection to scope.</p> <p>7 THE WITNESS: We would maintain a</p> <p>8 file on the doctor.</p> <p>9 Again, this was Sophia, but -- in</p> <p>10 this instance, but if we were reviewing</p> <p>11 doctors, yes, we would maintain a file on</p> <p>12 that doctor.</p> <p>13 BY MR. PIFKO:</p> <p>14 Q. What would that file be called?</p> <p>15 MS. McENROE: Objection to form,</p> <p>16 objection to scope.</p> <p>17 THE WITNESS: The file would be</p> <p>18 the DEA number of the doctor and their</p> <p>19 name.</p> <p>20 BY MR. PIFKO:</p> <p>21 Q. Is there some sort of specific</p> <p>22 use that you would do with that file?</p> <p>23 MS. McENROE: Objection to form,</p> <p>24 objection to scope.</p>	<p style="text-align: right;">Page 164</p> <p>1 Q. And what would the nature of the</p> <p>2 visit to the prescriber's office be?</p> <p>3 MS. McENROE: Objection to form,</p> <p>4 objection to scope.</p> <p>5 THE WITNESS: We have all of the</p> <p>6 data in front of us, but we don't know</p> <p>7 what the office looks like, if it's a</p> <p>8 functioning office, if it's in an office</p> <p>9 building that would look like a</p> <p>10 physician's office. And so the PDM and</p> <p>11 the APDM are responsible for sending back</p> <p>12 pictures of the doctor's office if</p> <p>13 possible, looking at the doctor's office</p> <p>14 to determine if there are people walking</p> <p>15 in and out and getting prescriptions</p> <p>16 every five minutes and not what would be</p> <p>17 a normal doctor visit.</p> <p>18 So they would be the eyes and</p> <p>19 ears looking for things like that.</p> <p>20 BY MR. PIFKO:</p> <p>21 Q. When you said PDM, you meant</p> <p>22 pharmacy district manager?</p> <p>23 A. Yes.</p> <p>24 Q. And APM is assistant pharmacy</p>
<p style="text-align: right;">Page 163</p> <p>1 THE WITNESS: We just store it on</p> <p>2 our drives.</p> <p>3 BY MR. PIFKO:</p> <p>4 Q. Would there be occasions if you</p> <p>5 found -- I believe you said on certain occasions</p> <p>6 there can be a suspicious prescriber; is that</p> <p>7 correct?</p> <p>8 MS. McENROE: Objection to form,</p> <p>9 objection to scope.</p> <p>10 THE WITNESS: That is correct.</p> <p>11 BY MR. PIFKO:</p> <p>12 Q. If you found a prescriber to be a</p> <p>13 suspicious prescriber, what would you do?</p> <p>14 MS. McENROE: Objection to form,</p> <p>15 objection to scope.</p> <p>16 THE WITNESS: If we found a</p> <p>17 suspicious prescriber, we would then look</p> <p>18 at the profile, verify the profile and</p> <p>19 send out a clinic protocol to the field</p> <p>20 teams, the asset protection district</p> <p>21 manager and the pharmacy district</p> <p>22 manager, to go and visit the prescriber's</p> <p>23 office.</p> <p>24 BY MR. PIFKO:</p>	<p style="text-align: right;">Page 165</p> <p>1 manager?</p> <p>2 A. Asset protection.</p> <p>3 Q. Okay. Thank you.</p> <p>4 In connection with those visits,</p> <p>5 would they speak to the doctor?</p> <p>6 MS. McENROE: Objection to form,</p> <p>7 objection to scope.</p> <p>8 THE WITNESS: They would ask to</p> <p>9 speak with office staff or to speak with</p> <p>10 the doctor. They would provide</p> <p>11 information on Rite Aid, such as the</p> <p>12 ability to get a flu shot at Rite Aid,</p> <p>13 things along those lines.</p> <p>14 BY MR. PIFKO:</p> <p>15 Q. Would they tell the doctor that</p> <p>16 they were investigating that doctor as a</p> <p>17 potentially suspicious prescriber?</p> <p>18 MS. McENROE: Objection to form,</p> <p>19 objection to scope.</p> <p>20 THE WITNESS: They would not.</p> <p>21 BY MR. PIFKO:</p> <p>22 Q. So then at some point this</p> <p>23 inquiry into the suspicious prescriber reaches</p> <p>24 some resolution. Agreed?</p>

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1 MS. McENROE: Objection to form,
2 objection to scope.
3 THE WITNESS: Yes.
4 BY MR. PIFKO:
5 Q. If Rite Aid finds that a
6 prescriber is a suspicious prescriber after
7 finishing that investigation, what does it do?
8 MS. McENROE: Objection to form,
9 objection to scope.
10 THE WITNESS: We have the
11 pictures come back and we have a file of
12 all the data that we've run. And at that
13 point, if there's -- if we believe that
14 it is a suspicious prescriber, we have a
15 committee of three pharmacists at our
16 corporate office that will sit down and
17 look at the data, look at the pictures,
18 and make a determination if that
19 prescriber is a book of business that we
20 wanted or not.
21 BY MR. PIFKO:
22 Q. So ultimately a decision could be
23 made not to service prescriptions from that
24 doctor; is that correct?

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1 MS. McENROE: Objection to form,
2 objection to scope.
3 THE WITNESS: Controlled
4 substance prescriptions, yes.
5 BY MR. PIFKO:
6 Q. To your knowledge, has that
7 happened on occasion?
8 MS. McENROE: Objection to form,
9 objection to scope.
10 THE WITNESS: It has.
11 BY MR. PIFKO:
12 Q. And when Rite Aid makes a
13 determination that they're not going to service a
14 prescriber anymore because they deem that
15 prescriber's practice to be sufficiently
16 suspicious, what would they do to implement that
17 decision?
18 MS. McENROE: Objection to form,
19 objection to scope.
20 THE WITNESS: Once the three
21 pharmacists at the corporate office sign
22 off that it's a book of business that we
23 don't want for the controlled substance,
24 then I notify the prescriber in a letter

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1 that states that because of the
2 prescription of oxycodone, or whatever
3 the drug may be, that effective at a
4 certain date, Rite Aid will no longer
5 dispense controlled substance
6 prescriptions under their DEA number.
7 BY MR. PIFKO:
8 Q. Do they have an appeal process or
9 anything or is that decision final once it's
10 made?
11 MS. McENROE: Objection to form,
12 objection to scope.
13 THE WITNESS: Typically when we
14 get to that point, they may call and ask
15 for an appeal, but when we reach that
16 decision, that's a very serious decision
17 that we don't take lightly. So typically
18 there is no appeal.
19 BY MR. PIFKO:
20 Q. To your knowledge, has that
21 happened ever?
22 MS. McENROE: Objection to form,
23 objection to scope.
24 THE WITNESS: Has what happened?

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1 BY MR. PIFKO:
2 Q. You've made a determine to stop
3 servicing business from a particular prescriber?
4 MS. McENROE: Objection to form,
5 objection to scope.
6 THE WITNESS: Yes, we have.
7 BY MR. PIFKO:
8 Q. Do you have a rough estimate
9 about how many times it's happened in your
10 career?
11 MS. McENROE: Objection to form,
12 objection to scope.
13 THE WITNESS: Over 150 times.
14 BY MR. PIFKO:
15 Q. That number came rather quickly.
16 You feel like that's a --
17 A. Very close, yes.
18 MS. McENROE: Objection to form,
19 objection to scope.
20 BY MR. PIFKO:
21 Q. Okay. Do you keep statistics on
22 that somewhere?
23 MS. McENROE: Objection to form,
24 objection to scope.

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1 THE WITNESS: We do.
2 BY MR. PIFKO:
3 Q. That's a statistic that you have
4 reviewed in the recent past?
5 MS. McENROE: Objection to form,
6 objection to scope.
7 THE WITNESS: I'm familiar with
8 it on a daily basis.
9 BY MR. PIFKO:
10 Q. That's something you check every
11 day?
12 MS. McENROE: Objection to form,
13 objection to scope.
14 THE WITNESS: Not every day, but
15 at least monthly.
16 BY MR. PIFKO:
17 Q. Can a doctor get reinstated after
18 they've been terminated?
19 MS. McENROE: Objection to form,
20 objection to scope.
21 THE WITNESS: Yes. A doctor can
22 get reinstated.
23 BY MR. PIFKO:
24 Q. Is there a formal process that

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1 they have to follow?
2 MS. McENROE: Objection to form,
3 objection to scope.
4 THE WITNESS: The doctor makes a
5 request of -- from myself that they would
6 like to be reinstated. And then I go in
7 and look at the prescriber's history.
8 So let's say it's been a year
9 since we shut the doctor off. What then
10 happens is he requests to be reinstated a
11 year later. I would look at that
12 doctor's history for the year, his
13 prescribing pattern for that year, to
14 determine if it has changed from when we
15 shut the person off.
16 BY MR. PIFKO:
17 Q. But you wouldn't have a history
18 on the substances, the controlled substances that
19 you shut off because you weren't servicing that.
20 Correct?
21 MS. McENROE: Objection to form,
22 objection to scope.
23 THE WITNESS: That is not
24 correct. We have a tool -- from 2013 on,

Page 172

1 we had a tool that was through IQVIA that
2 would provide industry data deidentified
3 for about 87 percent of retail
4 pharmacists.
5 BY MR. PIFKO:
6 Q. Okay. When you found that a
7 store has been servicing a suspicious prescriber,
8 have you ever undertaken anything to flag the
9 orders from that pharmacy as suspicious?
10 MS. McENROE: Objection to form,
11 objection to scope.
12 THE WITNESS: Could you repeat
13 the question, please?
14 BY MR. PIFKO:
15 Q. So if a store is filling
16 prescriptions from a physician who's been
17 determined to be a suspicious prescriber, does
18 Rite Aid undertake any effort to identify orders
19 from that store as suspicious as a result of them
20 being from the suspicious prescriber?
21 MS. McENROE: Objection to form.
22 THE WITNESS: One more time, I'm
23 sorry.
24 BY MR. PIFKO:

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1 Q. If a store is filling
2 prescriptions from a prescriber who's been
3 determined to be a suspicious prescriber, does
4 Rite Aid undertake any efforts to identify the
5 orders that come from that store -- during the
6 time when that suspicious prescriber was sending
7 patients to that store, does Rite Aid undertake
8 any effort to identify those orders as
9 suspicious?
10 MS. McENROE: Objection to form.
11 THE WITNESS: We do not.
12 BY MR. PIFKO:
13 Q. So Rite Aid does not use any of
14 the suspicious prescriber information that it may
15 have collected in determining whether an order
16 from any location is suspicious. Correct?
17 MS. McENROE: Objection to form.
18 THE WITNESS: The order has
19 already been shipped to the store, so
20 there's -- that's not incorporated -- the
21 suspicious prescriber isn't incorporated
22 in.
23 BY MR. PIFKO:
24 Q. What about when an investigation

Page 174

1 is going on, does Rite Aid undertake any effort
2 to look at the orders that are continuing to come
3 in as a result of prescriptions being placed
4 through that doctor?

5 MS. McENROE: Objection to form.

6 THE WITNESS: We continue to
7 monitor the prescriptions that would be
8 coming in, but we do not consider that a
9 suspicious order to place.

10 BY MR. PIFKO:

11 Q. So I believe we -- I asked you a
12 little bit earlier, do you remember discussing
13 this doctor, Dr. Harper?

14 MS. McENROE: Objection to form,
15 objection to scope.

16 THE WITNESS: I don't remember
17 discussing the doctor with Sophia.

18 BY MR. PIFKO:

19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]

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1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
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21 [REDACTED]
22 [REDACTED]

16 - - -

17 (Deposition Exhibit No.
18 Hart-30(b)(6)-6, Email dated 2011-02-01,
19 Bates stamped Rite_Aid_OMDL_0013134
20 through Rite_Aid_OMDL_0013136, was marked
21 for identification.)
22 - - -

23 BY MR. PIFKO:

24 Q. I'm handing you what's marked as

Page 176

1 Exhibit 6.

2 For the record, Exhibit 6 is a
3 three-page document Bates labeled
4 Rite_Aid_OMDL_0013134 through 36.

5 Please take a moment to look at
6 that and let me know when you're done.

7 A. (Reviewing document.)

8 Q. Have you seen this document
9 before?

10 A. I don't believe so, no.

11 Q. In reviewing this, do you know
12 what this document is?

13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]

Page 177

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Page 178

[REDACTED]

Page 179

[REDACTED]

21 - - -

22 (Deposition Exhibit No.

23 Hart-30(b)(6)-7, Press Release entitled

24 "Akron Doctor Pleads Guilty to Illegally

Page 180

1 Prescribing Painkillers," was marked for

2 identification.)

3 - - -

4 BY MR. PIFKO:

5 Q. I'm handing you what was

6 previously marked as Novack Exhibit 8 and I'm

7 marking here as Hart-30(b)(6) Exhibit 7.

8 Please take a moment to review

9 this. Note it's double sided.

10 Let me know when you're done.

11 MS. McENROE: I'm also going to

12 make another scope objection for the

13 record.

14 THE WITNESS: (Reviewing

15 document.)

16 I'm done.

17 BY MR. PIFKO:

18 Q. Have you seen this before?

19 A. Yes.

20 Q. When was the last time you saw

21 this?

22 A. Within the past several days.

23 Q. This is something you reviewed in

24 preparing for this deposition?

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1 A. Yes.

2 Q. Do you see the first sentence

3 here above the -- the headline reads, "Akron

4 Doctor Pleads Guilty to Illegally Prescribing

5 Painkillers."

6 Do you see that?

7 A. I do.

8 Q. It's dated October 20, 2014.

9 Do you see that?

10 A. I do.

11 Q. Do you see the first sentence

12 here, it says, "An Akron physician pleaded guilty

13 to illegally prescribing hundreds of thousands of

14 doses of painkillers and other pills to customers

15 for no legitimate medical purpose, even after he

16 learned some customers had died from

17 overdose-related deaths, law enforcement

18 officials said."

19 Do you see that?

20 A. I do.

21 Q. Did Rite Aid institute efforts to

22 shut this particular doctor down from its --

23 serving his customers?

24 MS. McENROE: Objection to form,

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1 objection to scope.
2 THE WITNESS: I don't remember.
3 - - -
4 (Deposition Exhibit No.
5 Hart-30(b)(6)-8, Indictment, Case No.:
6 5:14CR096, was marked for
7 identification.)
8 - - -
9 BY MR. PIFKO:
10 Q. I'm handing you what was
11 previously marked as Novack Exhibit 7 and I've
12 also marked here as Hart-30(b)(6) Exhibit 8. For
13 the record, it's an indictment of Dr. Harper.
14 MS. McENROE: For the record,
15 again, objection as to scope. And can
16 you tie this to any of the 30(b)(6)
17 topics? Because the witness already
18 said --
19 BY MR. PIFKO:
20 Q. It's dated March 25, 2014.
21 Please take a moment to review
22 this document and let me know when you're done.
23 MS. McENROE: I'm going to take
24 that as a no for purposes of the record.

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1 MR. PIFKO: I'm disagreeing with
2 your characterization. You can object to
3 scope. And I'm not going to answer
4 questions from you.
5 THE WITNESS: (Reviewing
6 document.)
7 BY MR. PIFKO:
8 Q. As an initial matter, have you
9 seen this document before?
10 A. I have.
11 Q. When did you see this?
12 A. The past several days.
13 Q. Is this something you reviewed in
14 connection with preparing for this 30(b)(6)
15 deposition?
16 A. It is.
17 Q. You can feel free to look at it
18 as much as you want to, but I want to just ask
19 you, on the second page here, it notes that Dr.
20 Harper had issues with Schedule III substances.
21 Do you see that? At the top of
22 the second page.
23 MS. McENROE: Objection to form.
24 Where are you looking, Mark? I'm sorry,

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1 I don't see what paragraph.
2 MR. PIFKO: It's paragraph 1. It
3 continues from the bottom of the first
4 page to the top of the second page.
5 MS. McENROE: And objection to
6 the scope as well.
7 THE WITNESS: I see hydrocodone.
8 BY MR. PIFKO:
9 Q. And specifically it says that Dr.
10 Harper and some of his colleagues, who they refer
11 to as the Harper Drug Trafficking Organization,
12 it says, starting on the first page that they
13 "agreed to illegally distribute hundreds of
14 thousands of doses of prescription painkillers to
15 customers located in the Northern District of
16 Ohio and elsewhere. They did so using ADOLPH
17 HARPER, JR.'S 'medical' offices located in Akron,
18 Ohio, by issuing drug orders purporting to be
19 'prescriptions' for Schedule II controlled
20 substances, primarily oxycodone, oxymorphone,
21 methadone, and amphetamines, Schedule III
22 controlled substances, primarily buprenorphine
23 and hydrocodone, and Schedule IV controlled
24 substances." It continues on.

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1 Do you see that?
2 MS. McENROE: Objection to form,
3 objection to scope.
4 THE WITNESS: I do.
5 BY MR. PIFKO:
6 Q. So you agree that part of this
7 indictment concerns Schedule III substances?
8 MS. McENROE: Objection to form,
9 objection to scope.
10 THE WITNESS: I do.
11 BY MR. PIFKO:
12 Q. And those were substances that
13 Rite Aid self-distributed during this time
14 period. Agree?
15 MS. McENROE: Objection to scope.
16 THE WITNESS: The hydrocodone was
17 distributed by Rite Aid.
18 BY MR. PIFKO:
19 Q. Did Rite Aid ever identify any
20 orders from the pharmacies that serviced Dr.
21 Harper's customers as suspicious?
22 MS. McENROE: Objection to form.
23 THE WITNESS: Could you repeat
24 the question? I'm sorry.

<p style="text-align: right;">Page 186</p> <p>1 BY MR. PIFKO: 2 Q. Yeah. 3 Did Rite Aid ever identify any 4 orders from the pharmacies that serviced Dr. 5 Harper's customers as suspicious? 6 MS. McENROE: Objection to form. 7 THE WITNESS: To the best of my 8 knowledge, no. 9 BY MR. PIFKO: 10 Q. Do you know if Rite Aid was aware 11 of this indictment on or around the time that it 12 occurred? 13 MS. McENROE: Object to the form, 14 objection to scope. 15 THE WITNESS: I do not know. 16 BY MR. PIFKO: 17 Q. Does Rite Aid track whether any 18 prescribers and -- who have customers that come 19 to Rite Aid stores are indicted? 20 MS. McENROE: Objection to form, 21 objection to scope. 22 THE WITNESS: We do not. 23 BY MR. PIFKO: 24 Q. Does Rite Aid track whether</p>	<p style="text-align: right;">Page 188</p> <p>1 Hart-30(b)(6)-9, Press Release, "Rite Aid 2 Corporation and Subsidiaries Agree to Pay 3 \$5 Million in Civil Penalties to Resolve 4 Violations in Eight States of the 5 Controlled Substances Act," 2 pages, was 6 marked for identification.) 7 - - - 8 BY MR. PIFKO: 9 Q. Take a moment to review that. 10 If you recall, there was a brief 11 discussion of this yesterday. 12 MS. McENROE: Again, for the 13 record, objection as to scope as to the 14 line of questioning pertaining to this 15 exhibit as outside the scope of the 16 30(b)(6) topics. 17 THE WITNESS: (Reviewing 18 document.) 19 BY MR. PIFKO: 20 Q. Have you seen this document 21 before? 22 A. I have. 23 Q. When was the last time you saw 24 this?</p>
<p style="text-align: right;">Page 187</p> <p>1 prescribers have lost their licenses? 2 MS. McENROE: Objection to form, 3 objection to scope. 4 THE WITNESS: We have a database 5 in our NextGen system that updates the 6 prescriber file on a daily basis. Once a 7 DEA license becomes invalid, that license 8 becomes invalid in our system and no 9 prescriptions can be dispensed under that 10 prescriber's DEA number. It's a national 11 database that's out there. 12 BY MR. PIFKO: 13 Q. How long has that been in place? 14 MS. McENROE: Objection to scope. 15 THE WITNESS: I'm going to say 16 2000 -- late 2000s, early 2000 -- late 17 2000s, like '9, '10, '11. That's just 18 speculation. It could have been there 19 before that, but... 20 BY MR. PIFKO: 21 Q. I'm handing you what's marked as 22 Hart-30(b)(6) Exhibit 9. 23 - - - 24 (Deposition Exhibit No.</p>	<p style="text-align: right;">Page 189</p> <p>1 A. Within the last several days. 2 Q. This is a document that you 3 reviewed in preparing for your 30(b)(6) 4 deposition? 5 A. Yes. 6 Q. Can you tell me what this is? 7 MS. McENROE: Objection to form, 8 objection to scope. 9 THE WITNESS: It's an 10 announcement of a settlement agreement 11 between Rite Aid and the Drug Enforcement 12 Administration from 2009. 13 BY MR. PIFKO: 14 Q. Does this refresh your 15 recollection about when Rite Aid instituted the 16 system that it uses to check whether prescribers' 17 DEA licenses are invalid? 18 MS. McENROE: Objection to form, 19 objection to scope. 20 THE WITNESS: I don't know that 21 that coincides. I couldn't say that for 22 sure. 23 BY MR. PIFKO: 24 Q. You agree this happened in 2009?</p>

<p style="text-align: right;">Page 190</p> <p>1 It says here -- it's dated -- this press release 2 is dated January 12, 2009. Do you agree? 3 MS. McENROE: Objection to form, 4 objection to scope. 5 THE WITNESS: I do. 6 BY MR. PIFKO: 7 Q. And you testified that you 8 believe that Rite Aid instituted its efforts to 9 check prescriber licenses sometime in 2009, '10 10 or '11; is that correct? 11 MS. McENROE: Objection to form. 12 THE WITNESS: I said that was -- 13 I will correct the record then. 14 There was a system in place to 15 check licenses prior to that. There was 16 enhancement to the system as well. 17 BY MR. PIFKO: 18 Q. The enhancement was sometime in 19 2009, '10 or '11? 20 MS. McENROE: Objection to form. 21 THE WITNESS: Again, I don't know 22 the date line of that. I don't have that 23 knowledge. 24 BY MR. PIFKO:</p>	<p style="text-align: right;">Page 192</p> <p>1 THE WITNESS: I see that. 2 BY MR. PIFKO: 3 Q. Do you agree that that was part 4 of the scope of the settlement agreement? 5 MS. McENROE: Objection to form, 6 objection to scope. 7 THE WITNESS: I do. 8 BY MR. PIFKO: 9 Q. It also says that, "Rite Aid 10 failed to notify the DEA in a timely manner of 11 significant thefts and losses of controlled 12 substances, thus permitting the diversion of 13 controlled substances to continue and undermining 14 DEA's ability to investigate such thefts...or 15 losses." 16 Do you see that? 17 MS. McENROE: Objection to form, 18 objection to scope. 19 THE WITNESS: I do. 20 BY MR. PIFKO: 21 Q. Do you agree that that was part 22 of the 2009 settlement? 23 MS. McENROE: Objection to form, 24 objection to scope.</p>
<p style="text-align: right;">Page 191</p> <p>1 Q. Was that made as a result of this 2 settlement? 3 MS. McENROE: Objection to form, 4 objection to scope. 5 THE WITNESS: It was not. 6 BY MR. PIFKO: 7 Q. There are some bullet points here 8 about halfway down the page. 9 Do you see those? 10 A. I do. 11 Q. It talks about some of the 12 alleged violations that occurred in connection 13 with this settlement. 14 Do you see that? 15 A. I do. 16 MS. McENROE: Objection. 17 BY MR. PIFKO: 18 Q. One of them is that "Rite Aid 19 knowingly filled prescriptions for controlled 20 substances that were not issued for a legitimate 21 medical purpose pursuant to a valid 22 physician-patient relationship." 23 Do you see that? 24 MS. McENROE: Objection to scope.</p>	<p style="text-align: right;">Page 193</p> <p>1 THE WITNESS: I do. 2 BY MR. PIFKO: 3 Q. It also says, "Rite Aid failed to 4 properly execute DEA forms used to ensure that 5 the amount of Schedule II drugs ordered by Rite 6 Aid were actually received." 7 Do you see that? 8 MS. McENROE: Objection to form, 9 objection to scope. 10 THE WITNESS: I do. 11 BY MR. PIFKO: 12 Q. Was that part of the settlement 13 as well? 14 MS. McENROE: Objection to form, 15 objection to scope. 16 THE WITNESS: That was part of 17 the settlement. 18 It should be noted that the Rite 19 Aid distribution center in Perryman was 20 not included or mentioned in the 21 settlement agreement. 22 BY MR. PIFKO: 23 Q. It says here in the paragraph 24 after those bullet points, part of the last</p>

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1 sentence, that accountability audits reflected "a
2 pattern of non-compliance with the requirements
3 of the Controlled Substances Act and federal
4 regulations that lead to the diversion of
5 controlled substances."
6 Do you see that?
7 MS. McENROE: Objection to form,
8 objection to scope.
9 THE WITNESS: You lost me on that
10 one.
11 BY MR. PIFKO:
12 Q. It's highlighted on the screen
13 for you.
14 A. Oh, okay. Sorry.
15 I do.
16 Q. Do you agree that that was part
17 of the settlement?
18 MS. McENROE: Objection to form,
19 objection to scope.
20 THE WITNESS: It was.
21 BY MR. PIFKO:
22 Q. There's a quote here from the DEA
23 acting administrator, two paragraphs down, second
24 to last paragraph on the first page there.

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1 It says, at the bottom of that
2 paragraph, "Our nation's pharmacies must play a
3 major role in the fight against drug abuse, so
4 that together we can protect public health and
5 keep our communities safe."
6 Do you see that?
7 MS. McENROE: Objection to form,
8 objection to scope.
9 THE WITNESS: I do.
10 BY MR. PIFKO:
11 Q. Do you agree with that statement?
12 MS. McENROE: Objection to form,
13 objection to scope.
14 THE WITNESS: I do.
15 MS. McENROE: Mark, when you get
16 a chance, we've been going about an hour
17 for a break.
18 MR. PIFKO: Yeah.
19 BY MR. PIFKO:
20 Q. Did Rite Aid identify any
21 suspicious orders as a result of any of the
22 allegations in connection with the settlement?
23 MS. McENROE: Objection to form.
24 THE WITNESS: Can you repeat the

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1 question?
2 BY MR. PIFKO:
3 Q. Yeah.
4 Like, for example, the settlement
5 concerned Rite Aid knowingly filling
6 prescriptions for controlled substances that were
7 not issued for a legitimate medical purpose
8 pursuant to a valid physician-patient
9 relationship.
10 Do you see that?
11 MS. McENROE: Objection to form,
12 objection to scope.
13 THE WITNESS: I do.
14 BY MR. PIFKO:
15 Q. Did Rite Aid identify any
16 suspicious orders as a result of prescriptions
17 that were filled that were not issued for a
18 legitimate medical purpose?
19 MS. McENROE: Objection to form.
20 THE WITNESS: We did not.
21 MR. PIFKO: All right. We can
22 take a break.
23 THE WITNESS: Wait.
24 THE VIDEOGRAPHER: Going off the

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1 record at 2 --
2 THE WITNESS: Wait, wait. May I
3 make a comment also, though?
4 As part of the press release, it
5 does state that "The settlement agreement
6 is neither an admission of liability by
7 Rite Aid nor a concession by the United
8 States that its claims" were not founded.
9 Thank you.
10 THE VIDEOGRAPHER: Going off the
11 record at 2:08 p.m.
12 - - -
13 (A recess was taken from
14 2:08 p.m. to 2:23 p.m.)
15 - - -
16 THE VIDEOGRAPHER: Going back on
17 the record at 2:23 p.m.
18 - - -
19 (Deposition Exhibit No.
20 Hart-30(b)(6)-10, Order of the State
21 Board of Pharmacy, Docket Number
22 D-110127-163, was marked for
23 identification.)
24 - - -

<p style="text-align: right;">Page 198</p> <p>1 BY MR. PIFKO:</p> <p>2 Q. I'm handing you what's marked as</p> <p>3 Exhibit 10.</p> <p>4 For the record, this is an order</p> <p>5 from the Ohio State Board of Pharmacy. The</p> <p>6 document itself is four pages. Take a moment to</p> <p>7 review it. Let me know when you're ready.</p> <p>8 The part I consider to be the</p> <p>9 document, just so you can understand, is this</p> <p>10 docket number D-110127-163, concerning Marcus --</p> <p>11 or Brian Marcus Kins.</p> <p>12 MS. McENROE: Starting in the</p> <p>13 middle of the first page?</p> <p>14 MR. PIFKO: Yeah.</p> <p>15 MS. McENROE: And then going</p> <p>16 until where, Mark?</p> <p>17 MR. PIFKO: It continues onto the</p> <p>18 last page, but only the top quarter of</p> <p>19 the last page.</p> <p>20 MS. McENROE: Where it says</p> <p>21 11:30 a.m.?</p> <p>22 MR. PIFKO: Yes.</p> <p>23 MS. McENROE: For the record, I'm</p> <p>24 going to object to this document and the</p>	<p style="text-align: right;">Page 200</p> <p>1 does work for Rite Aid?</p> <p>2 A. Yes.</p> <p>3 Q. When one serves on the Board of</p> <p>4 Pharmacy, is that concurrent with him working for</p> <p>5 Rite Aid?</p> <p>6 A. Yes.</p> <p>7 Q. So he still holds that -- does</p> <p>8 this Kevin Mitchell still work for Rite Aid?</p> <p>9 A. Yes. This Kevin Mitchell left</p> <p>10 from Rite Aid, went to work for the board, and</p> <p>11 came back to Rite Aid.</p> <p>12 Q. Okay.</p> <p>13 A. So he is currently a pharmacist</p> <p>14 for Rite Aid.</p> <p>15 Q. But he doesn't currently serve on</p> <p>16 the Board of Pharmacy?</p> <p>17 A. No. His term was up.</p> <p>18 Q. At the time that he was sitting</p> <p>19 on the Board of Pharmacy here, did he still work</p> <p>20 for Rite Aid?</p> <p>21 A. I don't -- I'm going to say yes,</p> <p>22 but again, my recollection could be wrong. But</p> <p>23 it looks around the time frame, yes.</p> <p>24 Q. Does anyone else who is a member</p>
<p style="text-align: right;">Page 199</p> <p>1 line of questioning that will be related</p> <p>2 to it as beyond the scope and not being</p> <p>3 tied to one of the topics.</p> <p>4 MR. PIFKO: You haven't heard the</p> <p>5 questions yet.</p> <p>6 MS. McENROE: I know. Just in</p> <p>7 terms of the document.</p> <p>8 THE WITNESS: (Reviewing</p> <p>9 document.)</p> <p>10 Okay.</p> <p>11 BY MR. PIFKO:</p> <p>12 Q. Have you seen this before?</p> <p>13 A. I have not.</p> <p>14 Q. It mentions here, as an aside,</p> <p>15 Kevin Mitchell here as being a member of the</p> <p>16 board of the Ohio Board of Pharmacy.</p> <p>17 I assume that's not the same</p> <p>18 Kevin Mitchell who works at Rite Aid?</p> <p>19 A. Okay.</p> <p>20 Q. Is it?</p> <p>21 A. This Kevin Mitchell is a</p> <p>22 pharmacist for Rite Aid in Ohio, not the Kevin</p> <p>23 Mitchell that's involved in this case.</p> <p>24 Q. Okay. So this Kevin Mitchell</p>	<p style="text-align: right;">Page 201</p> <p>1 of the board reflected here in that section under</p> <p>2 introduction work for Rite Aid?</p> <p>3 MS. McENROE: Objection, scope.</p> <p>4 THE WITNESS: No.</p> <p>5 BY MR. PIFKO:</p> <p>6 Q. Do you know who Michael Mone is?</p> <p>7 A. Yes.</p> <p>8 Q. Who is he?</p> <p>9 A. Michael Mone works for Cardinal.</p> <p>10 Q. Do you know what he does for</p> <p>11 Cardinal?</p> <p>12 A. He is an attorney and a</p> <p>13 pharmacist and does regulatory affairs.</p> <p>14 Q. Do you know if he was employed by</p> <p>15 Cardinal at the time that he sat on the Board of</p> <p>16 Pharmacy here?</p> <p>17 MS. McENROE: Objection to scope.</p> <p>18 THE WITNESS: I don't know his</p> <p>19 employment.</p> <p>20 BY MR. PIFKO:</p> <p>21 Q. How do you know who Mr. Mone is?</p> <p>22 A. I am on the Pennsylvania State</p> <p>23 Board of Pharmacy here in the state, and I</p> <p>24 interact with Mr. Mone on a routine basis at NABP</p>

<p style="text-align: right;">Page 202</p> <p>1 meetings, National Association of Boards of 2 Pharmacy meetings, or district -- NABP district 3 meetings and occasionally at NACDS meetings. 4 Q. In connection with those kind of 5 meetings, do you meet with any other distributors 6 of pharmaceutical products? 7 MS. McENROE: Objection to form, 8 objection to scope. 9 THE WITNESS: Not really. And 10 Michael and I are there as members of the 11 Board of Pharmacy. We are not meeting on 12 behalf of our jobs. 13 BY MR. PIFKO: 14 Q. So, to your knowledge, you don't 15 meet with, for example, anyone who works for 16 AmeriSource Bergen at those meetings? 17 MS. McENROE: Objection, form, 18 objection to scope. 19 THE WITNESS: There could be 20 someone at one of those meetings. I 21 don't know a lot of people from 22 AmeriSource Bergen since we don't -- Rite 23 Aid doesn't do business with them. 24 BY MR. PIFKO:</p>	<p style="text-align: right;">Page 204</p> <p>1 objection to scope. 2 THE WITNESS: Not off the top of 3 my head, no. 4 BY MR. PIFKO: 5 Q. Do you know if any of the 6 defendants in this litigation are members of the 7 NACDS? 8 MS. McENROE: Objection to form, 9 objection to scope. 10 THE WITNESS: I would say yes. 11 BY MR. PIFKO: 12 Q. What's the basis for saying that? 13 MS. McENROE: Objection to scope. 14 THE WITNESS: Reading the 15 documentation as far as the case and 16 industry newsletters and things like 17 that. 18 BY MR. PIFKO: 19 Q. When you say documentation for 20 the case, you've seen documents that have a list 21 of defendants on it, like the interrogatory 22 responses, things like that? 23 A. Yeah. Or there could be 24 something published in like a Pharmacy Times or</p>
<p style="text-align: right;">Page 203</p> <p>1 Q. How about McKesson, is anyone 2 from McKesson at those meeting? 3 MS. McENROE: Objection to form, 4 objection to scope. 5 THE WITNESS: Occasionally, yes. 6 BY MR. PIFKO: 7 Q. Who from McKesson attends those 8 meetings? 9 MS. McENROE: Objection to form, 10 objection to scope. 11 THE WITNESS: I don't remember 12 who from McKesson. I apologize. 13 BY MR. PIFKO: 14 Q. How about from any of the 15 manufacturers, do you know if there are people at 16 those meetings who work for drug manufacturers? 17 MS. McENROE: Objection to form, 18 objection to scope. 19 THE WITNESS: At the NACDS 20 meetings? There are drug manufacturers 21 that are members of NACDS, yes. 22 BY MR. PIFKO: 23 Q. Do you know which ones? 24 MS. McENROE: Objection to form,</p>	<p style="text-align: right;">Page 205</p> <p>1 something like that. 2 Q. So you're talking about -- to the 3 extent there's been media coverage of the case 4 and you see who's involved, that's what you're 5 talking about? 6 MS. McENROE: Objection to form, 7 objection to scope. 8 THE WITNESS: Yes. 9 BY MR. PIFKO: 10 Q. Okay. Turning back to this 11 particular Exhibit 10, this incident here, are 12 you familiar with this pharmacist, Mr. Kins? 13 MS. McENROE: Objection to form. 14 Objection to form, objection to scope. 15 THE WITNESS: I am not. 16 BY MR. PIFKO: 17 Q. If you turn to the second page, 18 there's a heading "Findings of Fact." 19 Do you see that? 20 A. I do. 21 Q. There's numbered paragraphs there 22 with parentheses. 23 Do you see that? Like 1, 2? 24 A. Yes.</p>

<p style="text-align: right;">Page 206</p> <p>1 Q. Paragraph 1, towards the bottom, 2 it says that Mr. Kins was the Responsible 3 Pharmacist at Rite Aid Pharmacy #4764 in 4 Broadview Heights, Ohio. 5 Do you see that? 6 MS. McENROE: Objection to scope. 7 THE WITNESS: I do. 8 BY MR. PIFKO: 9 Q. Do you know what the term 10 "responsible pharmacist" means? 11 MS. McENROE: Objection to scope. 12 THE WITNESS: I do. 13 BY MR. PIFKO: 14 Q. What does that mean? 15 A. It means that is the pharmacist 16 in charge, the head pharmacist for the store. 17 Q. Okay. And that's what I was 18 going to ask you, is -- so there's a hierarchy of 19 the pharmacists who work at any particular store? 20 MS. McENROE: Objection to form, 21 objection to scope. 22 THE WITNESS: In -- there is a 23 pharmacist that's in charge or the 24 pharmacist that's responsible for the</p>	<p style="text-align: right;">Page 208</p> <p>1 Q. We talked about -- I forget the 2 term you used now -- the front of the store? 3 A. Front end? 4 Q. Front end and the pharmacy. 5 Right? 6 A. Right. 7 Q. So those operations -- there's 8 some degree of separation between those 9 operations at a store. Correct? 10 MS. McENROE: Objection to form, 11 objection to scope. 12 THE WITNESS: That is correct. 13 BY MR. PIFKO: 14 Q. Okay. And somebody at the 15 pharmacy is responsible for the profit and loss 16 operations of the pharmacy. Correct? 17 MS. McENROE: Objection to form, 18 objection to scope. 19 THE WITNESS: That is correct. 20 BY MR. PIFKO: 21 Q. And is that the pharmacist in 22 charge? 23 MS. McENROE: Objection to scope. 24 THE WITNESS: That is correct.</p>
<p style="text-align: right;">Page 207</p> <p>1 recordkeeping. And then there could be a 2 staff pharmacist or a floater pharmacist 3 that may work in the store. 4 BY MR. PIFKO: 5 Q. And so you just alluded to some 6 of it, but the responsibilities of the pharmacist 7 in charge include recordkeeping and what else? 8 MS. McENROE: Objection to form, 9 objection to scope. 10 THE WITNESS: Typically the 11 pharmacist in charge is of staffing and 12 maintenance of prescriptions and that. 13 BY MR. PIFKO: 14 Q. I believe in Sophia Lai's 15 deposition it was discussed that she had profit 16 and loss responsibility for the pharmacy 17 operations at her pharmacy at one point. 18 Does the pharmacist in charge 19 have that kind of responsibility as well? 20 MS. McENROE: Objection to form, 21 objection to scope. 22 THE WITNESS: Can you repeat the 23 question? 24 BY MR. PIFKO:</p>	<p style="text-align: right;">Page 209</p> <p>1 BY MR. PIFKO: 2 Q. So in this particular case, Mr. 3 Kins was in charge of the profit and loss of this 4 particular Rite Aid, 4764; is that correct? 5 MS. McENROE: Objection to form, 6 objection to scope. 7 THE WITNESS: That is correct. 8 BY MR. PIFKO: 9 Q. It says here under the second 10 paragraph of "Findings of Fact" that Mr. Kins "is 11 addicted to or abusing drugs." 12 Do you see that? 13 A. I do. 14 Q. Do you have any reason to dispute 15 that finding? 16 MS. McENROE: Objection to form, 17 objection to scope. 18 THE WITNESS: I do not. 19 BY MR. PIFKO: 20 Q. If you go to the next page, well, 21 starting at the bottom of the second page and 22 continuing to the third page, it says, "Brian 23 Marcus Kins has admitted to Board agents that he 24 is addicted to controlled substances; that Brian</p>

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1 Marcus Kins has stolen controlled substances from
2 his employer for personal abuse;" and "that Brian
3 Marcus Kins altered prescriptions to obtain
4 controlled substances for his abuse and to sell."
5 Do you see that?
6 A. I do.
7 Q. Do you have any reason to dispute
8 those findings of fact in here?
9 MS. McENROE: Objection to form,
10 objection to scope.
11 THE WITNESS: I do not.
12 BY MR. PIFKO:
13 Q. Did Rite Aid ever report any
14 suspicious orders from store Rite Aid 4764 while
15 Mr. Kins was the responsible pharmacist?
16 MS. McENROE: Objection to form.
17 THE WITNESS: We did not report
18 any suspicious orders.
19 BY MR. PIFKO:
20 Q. Does Rite Aid have a process of
21 disciplining an employee or terminating them when
22 they have a Board of Pharmacy action brought
23 against them?
24 MS. McENROE: Objection to form,

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1 objection to scope.
2 THE WITNESS: Any time an
3 employee diverts controlled substances,
4 they would be terminated and Rite Aid
5 would turn that individual into the state
6 Board of Pharmacy.
7 BY MR. PIFKO:
8 Q. Other than terminating them, is
9 there any other investigation with respect to the
10 order history at that store that would occur in
11 connection with a finding that a pharmacist in
12 charge or any other pharmacist diverted
13 controlled substances?
14 MS. McENROE: Objection to form,
15 objection to scope.
16 THE WITNESS: Rite Aid would
17 conduct an accountability of all of the
18 drugs that entered into the pharmacy
19 in -- or dispensed to determine if there
20 was a loss of controlled substances.
21 BY MR. PIFKO:
22 Q. By loss, you mean theft?
23 A. Theft.
24 Q. What if a pharmacist doesn't

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1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]

Page 213

1 THE WITNESS: That would be part
2 of the asset protection's investigation
3 into the theft.
4 BY MR. PIFKO:
5 Q. And what would be the outcome if
6 they found that there was theft?
7 MS. McENROE: Objection to form,
8 objection to scope.
9 THE WITNESS: If there was theft
10 and the loss of drugs, the loss would be
11 reported to the Ohio Board of Pharmacy
12 and to the Drug Enforcement
13 Administration.
14 BY MR. PIFKO:
15 Q. But Rite Aid wouldn't make any
16 reports concerning suspicious orders. Correct?
17 MS. McENROE: Objection to form,
18 objection to scope.
19 THE WITNESS: We would not make a
20 report of a suspicious order.
21 BY MR. PIFKO:
22 Q. Would Rite Aid make any
23 adjustments to its auto replenishment system if
24 it knew that, for example, in this case, that the

Page 214

1 pharmacist was stealing prescriptions for
2 personal use or selling them to others?
3 MS. McENROE: Objection to form.
4 THE WITNESS: We would not adjust
5 the auto replenishment.
6 BY MR. PIFKO:
7 Q. So when it's conducting its
8 analysis of [REDACTED] and the like, it's
9 including that conduct as well, potentially.
10 Correct?
11 MS. McENROE: Objection to form.
12 THE WITNESS: It would be
13 including the prescriptions that were
14 fraudulently dispensed, because they
15 would be through the system. So yes.
16 BY MR. PIFKO:
17 Q. I'm handing you what's been
18 marked as Hart-30(b)(6) Exhibit 11.
19 - - -
20 (Deposition Exhibit No.
21 Hart-30(b)(6)-11, Order of the State
22 Board of Pharmacy Docket Number
23 D-100621-134, was marked for
24 identification.)

Page 215

1 - - -
2 BY MR. PIFKO:
3 Q. It's another order of the state
4 Board of Pharmacy. This one's five pages.
5 Direct your attention to the one
6 that begins on the bottom of the first page
7 concerning Henry Kozik, docket number
8 D-100621-134.
9 Take a moment to review that and
10 let me know when you're done.
11 MS. McENROE: For the record, I'm
12 going to object to the use of this
13 document as being outside the scope of
14 the 30(b)(6) for this deposition.
15 THE WITNESS: I have a question.
16 Here it makes note under the
17 State's Exhibit Number 3, "Rite Aid
18 Corporation Letter of Explanation."
19 Is that available to review?
20 BY MR. PIFKO:
21 Q. I don't have a copy of that with
22 me. Maybe Kevin Mitchell can get it for us.
23 Are you ready?
24 A. I am ready.

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1 Q. Have you seen this before?
2 A. I have not.
3 Q. Do you know who Henry Kozik is?
4 A. A pharmacist, yes.
5 Q. Someone who was employed by Rite
6 Aid?
7 MS. McENROE: Objection to scope.
8 THE WITNESS: Based on the order,
9 yes.
10 BY MR. PIFKO:
11 Q. The order has a number of
12 findings of fact concerning thefts committed by
13 Mr. Kozik on various dates, specifically
14 identifying various thefts of product that he
15 made.
16 Do you see that?
17 MS. McENROE: Objection to form,
18 objection to scope.
19 THE WITNESS: I do.
20 BY MR. PIFKO:
21 Q. Paragraph 5 also says -- it's on
22 the third page.
23 Are you there?
24 A. I'm fine.

Page 217

1 Q. It says, "Henry F. Kozik did, on
2 or about June 2, 2007, knowingly sell a
3 controlled substance when the conduct was not in
4 accordance with Chapters 3719., 4729., and 4731.
5 of the Ohio Revised Code, to wit: Henry F. Kozik
6 gave a female at least 33 hydrocodone/APAP 5/500
7 tablets and at least 43 tablets of
8 hydrocodone/APAP 7.5/750 without a valid
9 prescription from a prescriber and not for a
10 legitimate medical purpose."
11 Do you see that?
12 MS. McENROE: Objection to scope.
13 THE WITNESS: I do.
14 BY MR. PIFKO:
15 Q. To your knowledge, did Rite Aid
16 report any suspicious orders from the pharmacies
17 where Mr. Kozik worked --
18 MS. McENROE: Objection to form.
19 BY MR. PIFKO:
20 Q. -- as a result of these
21 incidents?
22 MS. McENROE: Objection to form.
23 THE WITNESS: We did not.
24 BY MR. PIFKO:

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1 Q. Do you know if Rite Aid conducted
2 an investigation into this conduct?
3 MS. McENROE: Objection to scope,
4 objection to form.
5 THE WITNESS: An investigation
6 would have been completed by our asset
7 protection team.
8 BY MR. PIFKO:
9 Q. What's the basis for you
10 believing that such an investigation would have
11 occurred?
12 MS. McENROE: Objection to scope.
13 THE WITNESS: Any theft of
14 controlled substances results in an asset
15 protection investigation.
16 BY MR. PIFKO:
17 Q. And if Mr. Kozik was disciplined
18 by the Board of Pharmacy, Rite Aid would know
19 about that?
20 MS. McENROE: Objection to form,
21 objection to scope.
22 THE WITNESS: Yes, we would know.
23 We have a system that we use to verify
24 our associates and their licenses to make

Page 219

1 sure that they remain valid.
2 BY MR. PIFKO:
3 Q. As we discussed with respect to
4 the prior Board of Pharmacy order, with respect
5 to paragraph 5 here, there would not have been
6 any adjustments to Rite Aid's auto replenishment
7 system as a result of this sale to a female of
8 certain hydrocodone tablets without a valid
9 prescription.
10 Do you agree?
11 MS. McENROE: Objection to form,
12 objection to scope.
13 THE WITNESS: There would be no
14 revision.
15 BY MR. PIFKO:
16 Q. If a pharmacist conducts any due
17 diligence of any suspected red flags, does -- at
18 the time when Rite Aid was self-distributing
19 Schedule III controlled substances, did the
20 distribution center who would sell to that
21 pharmacy have any visibility into the
22 investigation being conducted by the pharmacist?
23 MS. McENROE: Objection.
24 Objection to form.

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1 THE WITNESS: They did not.
2 BY MR. PIFKO:
3 Q. Did Rite Aid have any policy
4 whereby if a pharmacist conducted such an
5 investigation, they needed to report that back up
6 to the distribution center?
7 MS. McENROE: Objection to form.
8 THE WITNESS: The pharmacist, if
9 they did an investigation, would report
10 that to their pharmacy district manager
11 or their asset protection district
12 manager, not to the distribution center.
13 BY MR. PIFKO:
14 Q. Would anybody in that chain
15 ultimately provide information that there was a
16 potential red flag to the distribution center?
17 MS. McENROE: Objection to form.
18 THE WITNESS: Typically, no.
19 BY MR. PIFKO:
20 Q. I'm handing you a document that
21 was previously marked in Mr. Belli's deposition
22 as Exhibit 15. And I have marked it as
23 Exhibit 12 to Rite Aid's 30(b)(6) deposition.
24 - - -

Page 221

1 (Deposition Exhibit No.
2 Hart-30(b)(6)-12, Project Initiation for
3 504 Suspicious Order Monitoring, Bates
4 stamped Rite_Aid_OMDL_0040184 through
5 Rite_Aid_OMDL_0040198, was marked for
6 identification.)
7 - - -
8 BY MR. PIFKO:
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]

Page 222

[REDACTED]

Page 223

[REDACTED]

Page 224

[REDACTED]

7 - - -

8 (Deposition Exhibit No.

9 Hart-30(b)(6)-13, Email chain, top one

10 dated 2013-08-07, Bates stamped

11 Rite_Aid_OMDL_0024599 and

12 Rite_Aid_OMDL_0024600, was marked for

13 identification.)

14 - - -

15 BY MR. PIFKO:

16 Q. I'm handing you another exhibit

17 concerning this project. You can keep that one

18 with you as well.

19 It's marked as Exhibit

20 Hart-30(b)(6)-13.

21 For the record, Exhibit 13 is

22 Bates labeled Rite_Aid_OMDL_0024599, and it has

23 an attachment which is a spreadsheet, which is

24 Bates labeled Rite_Aid_OMDL_0024600.

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1 Let me know when you're done

2 reading Exhibit 13.

3 A. I'm done reading number 13.

4 Q. Have you seen Exhibit 13 before?

5 A. I have.

6 Q. When was the last time you saw

7 that?

8 A. Within the past few days.

9 Q. This is a document that you

10 reviewed in preparing for your 30(b)(6)

11 deposition?

12 A. It is.

13 Q. When do you believe was the first

14 time you saw this document?

[REDACTED]

Page 226

[REDACTED]

Page 228

[REDACTED]

Page 227

[REDACTED]

Page 229

[REDACTED]

Page 234

[REDACTED]

Page 236

[REDACTED]

Page 235

1 have been speaking about as far as
2 replenishment and billing in our current
3 system. And this would enhance the
4 system.
5 BY MR. PIFKO:
6 Q. It says that -- where it says,
7 "Today blanket thresholds are manually enforced
8 at 5,000 dosage units per individual ndc per week
9 per store regardless of dispensing volume or
10 trends."
11 Do you see that?
12 A. Yes.
13 Q. Is that an accurate statement
14 about the system as of when this was written, in
15 August 7, 2013?
16 MS. McENROE: Objection to form.
17 THE WITNESS: Yes. Blanket
18 controls were in place of 5,000 dosage
19 units per store.
20 BY MR. PIFKO:
21 Q. Regardless of dispensing volume
22 or trends. Correct?
23 MS. McENROE: Objection to form.
24 THE WITNESS: Correct.

Page 237

[REDACTED]

Page 238

[REDACTED]

Page 240

[REDACTED]

Page 239

[REDACTED]

Page 241

[REDACTED]

Page 242

[REDACTED]

Page 244

[REDACTED]

Page 243

[REDACTED]

Page 245

[REDACTED]

Page 246

[REDACTED]

Page 247

[REDACTED]

21 MR. PIFKO: We can take a break.

22 MS. McENROE: Thank you.

23 THE VIDEOGRAPHER: Going off the

24 record at 3:23 p.m.

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1 - - -

2 (A recess was taken from

3 3:23 p.m. to 3:46 p.m.)

4 - - -

5 THE VIDEOGRAPHER: Back on the

6 record. The time is 3:46 p.m.

7 BY MR. PIFKO:

8 Q. Let's go back to Exhibit 12.

9 Do you have it in front of you?

10 A. I've got it. Thank you.

[REDACTED]

Page 249

[REDACTED]

Page 258

[REDACTED]

Page 260

[REDACTED]

Page 259

[REDACTED]

Page 261

[REDACTED]

Page 262

[REDACTED]

Page 264

[REDACTED]

Page 263

[REDACTED]

Page 265

[REDACTED]

Page 266

[REDACTED]

Page 268

[REDACTED]

Page 267

[REDACTED]

Page 269

[REDACTED]

Page 270

[REDACTED]

Page 272

[REDACTED]

Page 271

[REDACTED]

Page 273

[REDACTED]

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1 Hart-30(b)(6)-15, PowerPoint slides,
2 Bates stamped Rite_Aid_OMDL_0046067
3 through Rite_Aid_OMDL_0046072, was marked
4 for identification.)
5 - - -
6 BY MS. McENROE:
7 Q. I hand you what I've marked as
8 Exhibit 15.
9 Do you recognize this document?
10 A. I do.
11 Q. What is it?
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]

Page 279

1 [REDACTED]
2 [REDACTED]
3 - - -
4 (Deposition Exhibit No.
5 Hart-30(b)(6)-16, Email dated 2010-12-10,
6 Bates stamped Rite_Aid_OMDL_0020381 and
7 Rite_Aid_OMDL_0020381, was marked for
8 identification.)
9 - - -
10 BY MS. McENROE:
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]

Page 280

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 - - -
23 (Deposition Exhibit No.
24 Hart-30(b)(6)-17, Handwritten notes,

Page 281

1 12/14/10, Bates stamped
2 Rite_Aid_OMDL_0046065, was marked for
3 identification.)
4 - - -
5 (Phone interruption.)
6 - - -
7 BY MS. McENROE:
8 Q. Wait until the phone stops
9 ringing. Hold on one second.
10 Ms. Hart, I handed you what's
11 been marked as Exhibit Number 17.
12 A. Yes.
13 Q. Do you recognize this document?
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]

Page 282

Page 284

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

5 - - -

6 (Deposition Exhibit No.

7 Hart-30(b)(6)-18, Email dated 2011-01-21,

8 Bates stamped Rite_Aid_OMDL_0020541 and

9 Rite_Aid_OMDL_0020542, was marked for

10 identification.)

11 . . .

12 BY MS. McENROE:

13 Q. I'm going to hand you what I have

Age Group	Percentage of Respondents
18-29	80%
30-49	75%
50-64	85%
65+	50%

Government	Percentage
Current government	85%
Previous government	15%

8 MS. McENROE: I have no further
9 questions. Thank you.

10 MR. PIFKO: I don't think we have
11 questions, but let me just look at the
12 documents real quick.

13 MS. McENROE: Let's go off the
14 record real quick.

15 THE VIDEOGRAPHER: Going off the
16 record, 4:50 p.m.

17 - - -

(A recess was taken from 4:50
p.m. to 4:51 p.m.)

20 - - -

21 THE VIDEOGRAPHER: Back on the
22 record at 4:51 p.m.

23

24

Page 283

Page 285

A horizontal bar chart titled 'U.S. should take action to address climate change' showing the percentage of respondents who believe the U.S. should take action to address climate change. The chart is broken down by age group (18-29, 30-49, 50-69, 70+) and gender (Male, Female). The y-axis lists 16 categories combining age and gender. The x-axis represents the percentage, ranging from 0 to 100. The bars are dark blue.

Category	Percentage (%)
18-29 Male	35
18-29 Female	75
30-49 Male	30
30-49 Female	85
50-69 Male	90
50-69 Female	35
70+ Male	85
70+ Female	95
18-29 Male	25
30-49 Male	65
50-69 Male	100
70+ Male	35
18-29 Female	25
30-49 Female	80
50-69 Female	30
70+ Female	85

1 - - -
2 EXAMINATION
3 - - -

4 BY MR. PIFKO:

5 Q. I want to direct your attention
6 to Exhibit 15 that your counsel just introduced
7 to you.

8 For the record, it's a multi-page
9 document, Bates labeled Rite_Aid_OMDL_004607
10 through 46072.

11 Can you tell me what this is?

Age Group	Should Take Action (%)	Should Not Take Action (%)
18-29	85	15
30-49	85	15
50-69	85	15
70+	85	15

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Page 288

A horizontal bar chart consisting of 20 rows. Each row contains a single black bar of varying length. The bars are arranged in a sequence that generally trends upwards from left to right, with some fluctuations. The first bar is short, followed by a longer one, then a very long one, and so on, ending with a bar of medium length.

20 MR. PIFKO: Okay. No further
21 questions.
22 MS. McENROE: Thank you. That
23 concludes the 30(b)(6) deposition of Ms.
24 Hart.

Page 287

Page 289

A horizontal bar chart titled "U.S. should take action to address climate change". The y-axis lists age groups: 18-29, 30-49, 50-69, 70+, and "Don't know". The x-axis represents the percentage of respondents, ranging from 0 to 100 in increments of 10. For each age group, there are two bars: a blue bar for "Men" and an orange bar for "Women". The data shows that in all age groups, a majority of respondents believe the U.S. should take action to address climate change. The percentage of respondents who believe in taking action is generally higher among younger age groups and among women compared to men.

Age Group	Men (%)	Women (%)
18-29	88	92
30-49	85	88
50-69	82	85
70+	78	82
Don't know	12	10

1 THE VIDEOGRAPHER: Going off the
2 record. The time is 4:55 p.m.
3 (Witness excused.)
4 (Deposition concluded at
5 approximately 4:55 p.m.)
6
7
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20
21
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23
24

Page 290

1
2 CERTIFICATE
3
4
5 I HEREBY CERTIFY that the witness
6 was duly sworn by me and that the deposition is a
7 true record of the testimony given by the
8 witness.
9
10 It was requested before
11 completion of the deposition that the witness,
12 JANET GETZEY HART, have the opportunity to read
13 and sign the deposition transcript.
14
15
16
17
18
19
20
21
22
23
24

ANN MARIE MITCHELL, a Federally
Approved Certified Realtime
Reporter, Registered Diplomate
Reporter, Registered Merit Reporter and
Notary Public

(The foregoing certification of
this transcript does not apply to any
reproduction of the same by any means, unless
under the direct control and/or supervision of
the certifying reporter.)

Page 291

1 INSTRUCTIONS TO WITNESS
2
3 Please read your deposition over
4 carefully and make any necessary corrections.
5 You should state the reason in the appropriate
6 space on the errata sheet for any corrections
7 that are made.
8 After doing so, please sign the
9 errata sheet and date it.
10 You are signing same subject to
11 the changes you have noted on the errata sheet,
12 which will be attached to your deposition.
13 It is imperative that you return
14 the original errata sheet to the deposing
15 attorney within thirty (30) days of receipt of
16 the deposition transcript by you. If you fail to
17 do so, the deposition transcript may be deemed to
18 be accurate and may be used in court.
19
20
21
22
23
24

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1 - - - - -
2 E R R A T A
3 - - - - -
4 PAGE LINE CHANGE
5
6 REASON: _____
7
8 REASON: _____
9
10 REASON: _____
11
12 REASON: _____
13
14 REASON: _____
15
16 REASON: _____
17
18 REASON: _____
19
20 REASON: _____
21
22 REASON: _____
23
24 REASON: _____

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1
2 ACKNOWLEDGMENT OF DEPONENT
3
4 I, _____, do
5 hereby certify that I have read the foregoing
6 pages, 1 - 293, and that the same is a correct
7 transcription of the answers given by me to the
8 questions therein propounded, except for the
9 corrections or changes in form or substance, if
10 any, noted in the attached Errata Sheet.
11
12
13
14 JANET GETZEY HART DATE
15
16
17 Subscribed and sworn
18 to before me this
19 _____ day of _____, 20 _____.
20 My commission expires: _____
21
22
23
24

Notary Public